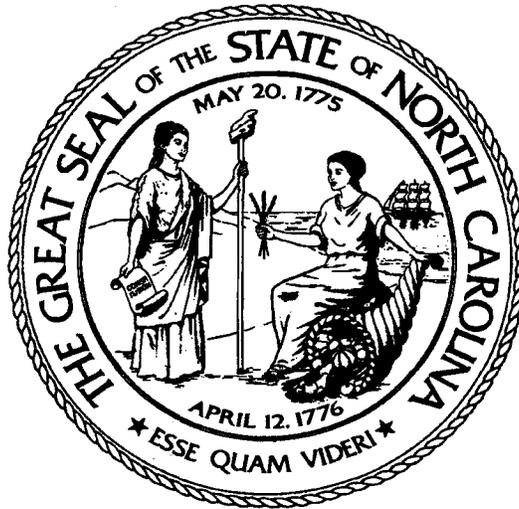


**LEGISLATIVE  
RESEARCH COMMISSION**

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**CONSUMER PROTECTION COMMITTEE**



**REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

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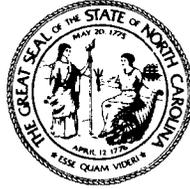
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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on consumer protection issues. The report was prepared by the Legislative Research Commission's Committee on Consumer Protection pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Handwritten signature of Daniel T. Blue, Jr.

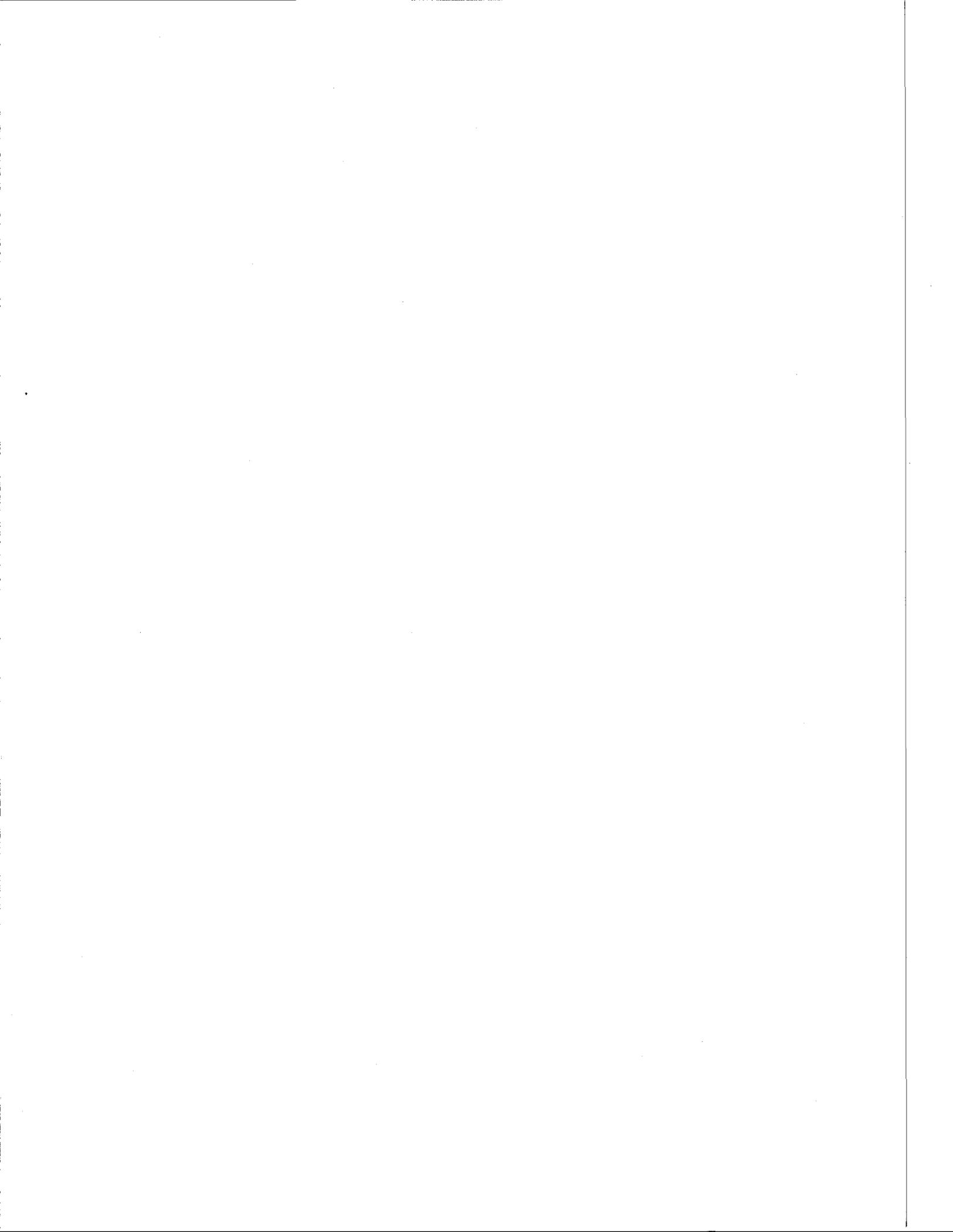
Daniel T. Blue, Jr.  
Speaker of the House

Handwritten signature of Marc Basnight

Marc Basnight  
President Pro Tempore

Cochairmen  
Legislative Research Commission





1993-1994

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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Marc Basnight, Cochair

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Senator Frank W. Ballance, Jr.  
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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of consumer protection would have been authorized by Part II, Sec. 2.1(54) of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider the following bills in determining the nature, scope and aspects of the study:

- (1) HJR 714 - Health and Fitness Club Issues
- (2) House Bill 798 - Rental Vehicle Insurance

- (3) House Bill 1032 - Residential Property Disclosure Act
- (4) House Joint Resolution 1324 - Extend Warranties to Sale or Lease of Used Motor Vehicles
- (5) House Bill 1453 - Consumer Protection Issues

The relevant portions of the 2nd Edition of House Bill 1319 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its Civil and Criminal Law area under the direction of Representative Bertha M. Holt. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters).

The Committee was chaired by Senator Fred Folger, Jr. and Representative Ruth M. Easterling. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Consumer Protection Study Committee met five times during the course of its study. The dates of those meetings were: January 21, 1994, September 28, 1994, October 18, 1994, November 17, 1994, and December 8, 1994. The lengthy time elapsed between the first and second meetings is attributable in large part to the intervention of the 1994 Special Session (the Crime Session) and the 1994 Short Session (1993 General Assembly, Regular Session 1994). Study committees do not meet while the General Assembly is in session.

The Committee's January meeting focused on presentations of the bills referred to it for study. The subject areas and speakers on these bills were:

- (1) HJR714, Regulate Health and Fitness Clubs,  
Representative Greg Thompson
- (2) HB798, Rental Vehicle Insurance Claim Priorities,  
Mr. Frank Coronna, Owner, Triangle Rent-A-Car;
- (3) HB1032, Residential Property Disclosure Act,  
Mr. John Carroll, N.C. Association of Realtors;
- (4) HJR 1303, Consumer Protection Issues  
Representative Owen Spears
- (5) HJR 1324, Study Warranties for Used Cars,  
Representative Charles Beall; and
- (6) HB 1453, Study Consumer Protection Issues,  
Representative Ruth Easterling

The Committee also heard a recommendation from the Attorney General's office on the need for regulating check cashing services. The speaker for this recommendation was Mr. Phil Lehman, N.C. Attorney General's office. The

Committee decided to review specific proposals on these topics and to invite persons to speak in support of or opposition to each proposal at its ensuing meetings.

At the September meeting the Committee heard speakers on two legislative proposals. The first was the Attorney General's office proposal to regulate check cashing businesses. The practices of certain of these businesses is resulting in financial hardship to consumers of the services, a large number of whom are military personnel. In support of regulating check cashing practices, the Committee heard from Mr. Ted Araujo, attorney for military personnel in Fayetteville, N.C., and Mr. Craig Chamberlain, President of Marine Federal Credit Union in Jacksonville, N.C. In opposition to such regulation the Committee heard from Mr. John Johnson, owner of Express Check Cashing Center in Fayetteville, N.C. Staff prepared a comparison of how other states regulate check cashing businesses. A copy of this comparison may be found in Appendix C7 of this report. Based on the information presented, the Committee directed staff to draft legislation regulating check cashing businesses for its review at the next meeting. The Committee reviewed the draft legislation and approved it at its October meeting. A copy of the legislative proposal may be found in Appendix C of this report.

The second proposal was a bill requiring sellers of real estate to either disclose or disclaim known conditions of the property to the buyer. The proposal was presented by Mr. John Carroll, N.C. Association of Realtors. Although no other speakers made presentations to the Committee in opposition or support of this proposal, persons from the North Carolina Bar Association, the North Carolina Real Estate Commission, and the North Carolina Attorney General's office were in attendance at the meetings in which this proposal was discussed. The Committee reviewed a final draft of the proposal at its October meeting and approved it for recommendation to the Legislative

Research Commission. A copy of this legislation may be found in Appendix D of this report.

The Committee's third meeting was held on October 18, 1994. At this meeting the Committee reviewed a proposal from the American Association of Retired Persons (AARP) to adopt a Manufactured Homeowner's Bill of Rights similar to that proposed in Senate Bill 1228 (1993). Mr. John Mathis, member of the AARP Capital City Task Force, informed the Committee that some owners of mobile/manufactured homes were having difficulty with respect to the rental of land on which their homes are situated. The Committee requested that someone representing the interests and views of park owners be invited to address the committee on this proposal. Mr. Paul Flick attended the Committee's November meeting to speak in opposition to the legislation proposed by the AARP. After hearing Mr. Flick's concerns about the proposal, the Committee amended it to address one of these concerns, and, after further discussions about the proposal, approved it as amended. A copy of this proposal may be found in Appendix E of this report.

At the October meeting the Committee also reviewed a proposal to modify responsibility for payment of certain claims in rental car liability cases. This proposal was first presented in House Bill 798 (1993). The proposal is meant to address the situation where the the driver of a rental car is at fault in an accident and that driver was not authorized to drive the vehicle under the rental contract. Under current law the rental car company must pay the claim, even though the company did not authorize this person to drive the car. The Committee requested that staff redraft the proposal to more narrowly address the problem, and that the Department of Insurance be invited to comment on this legislation at the November meeting. At the November meeting, Mr. Bill Hale of the Department of Insurance indicated that he had reviewed the draft, the Department did not oppose it, and suggested that language be included to cover a

situation omitted in the bill. The Committee approved the proposal, as amended. A copy of this proposal may be found in Appendix F of this report.

The Committee next met on November 17 to hold a public hearing on Representative Beall's proposal to require warranties on certain used cars. After the public hearing, the Committee considered a bill draft modeled on New York's used car lemon law. The Committee chose not to recommend the warranty proposal, but did support a recommendation that the problems raised at the public hearing and during committee discussion warrant further study by the General Assembly. The text of this recommendation is presented under the Findings and Recommendations section of this report.

Also at the November meeting Representative Ruth Easterling, Committee Co-Chair, proposed legislation to establish a permanent consumer protection study commission. The Committee adopted the proposal, a copy of which may be found in Appendix G of this report.

The Committee directed staff to prepare this report and approved legislative proposals for the Committee's review at its final meeting on December 8.

Copies of bills referred to the Consumer Protection Committee for study may be found in Appendix H of this report.

One of the bills referred to the Committee for study, HJR 714, Health and Fitness Club Issues, was sponsored by a member of the Committee, Representative Greg Thompson. During the period of the Committee's study Representative Thompson determined that the concerns that prompted him to introduce the bill had been addressed in recent legislation and he prefers to let the newly enacted legislation have time to be implemented before determining whether further study and modification are needed. Thus, Representative Thompson did not pursue his request for Committee study of this topic.

## FINDINGS AND RECOMMENDATIONS

**RECOMMENDATION ONE:** The General Assembly should enact the bill found in Appendix C, which regulates check cashing businesses. The bill requires that check cashing businesses be licensed by the Commissioner of Banks. The bill restricts fees that licensees may charge for the service, establishes recordkeeping requirements, prohibits certain practices, sets grounds for suspension and revocation of the license, and authorizes imposition of penalties for violations.

The Committee finds that such regulation is needed because of certain practices on the part of some check cashing businesses. The most harmful practices involve the fees charged to cash a check (e.g. \$25 to cash a \$100 personal check), and representations to the customer that the check will not be deposited by the check cashing service until the end of the month. The Attorney General's office contends that such a large fee coupled with holding the check amounts to a loan (e.g. \$75.00) at a usurious rate of interest (\$25.00). The resulting harm of these practices is twofold: First, it encourages consumers to overdraw on their checking account because they know the check cashed by the check cashing service will not be deposited immediately. The potential for overdraft then causes the same consumers to cash additional checks to cover the checks previously cashed, perpetuating a vicious cycle of indebtedness by the consumer. Second, because the check cashing business holds the cashed checks for deposit until the last day of the month, which is pay day for many people, the presentment of so many checks at one time creates a serious hardship for the financial institutions to which the checks are presented for payment. The testimony of Mr. Ted Araujo and Mr. Craig Chamberlain on the negative impact of these practices on consumers may be found in the Committee notebook on file in the Legislative Library. The opposing testimony of Mr. John Johnson may also be found in the notebook.

**RECOMMENDATION TWO:** The General Assembly should enact the bill found in Appendix D, establishing the Residential Property Disclosure Act. The bill requires that persons transferring real property to a buyer must either disclose known conditions of the property, or inform the buyer that the seller makes no representations as to the conditions of the property and that the property is being sold AS IS. The bill exempts certain types of transfers, sets out the disclosure/disclaimer form to be used, indicates what conditions must be disclosed and the time for disclosure, and what actions the buyer may take if disclosure is not made or is erroneously made. The bill provides that rights and duties under landlord-tenant law are not affected by the Act, and authorizes the North Carolina Real Estate Commission to print forms and charge reasonable fees therefor.

The Committee found that requiring certain disclosures in real estate transactions affords purchasers of real property the opportunity to learn about hidden defects in the property which may require costly repair, may affect the structural integrity or economic value of the property, and may also prevent or limit litigation over the defects after the sale.

**RECOMMENDATION THREE:** The General Assembly should enact the bill found in Appendix E, which establishes a bill of rights for owners of manufactured homes. The bill requires that there be certain disclosures by park owners to tenants who rent site locations in the park, provides that a park owner may not interfere with a tenant's right to sell his or her home, to advertise the sale, and to allow access to prospective buyers. The bill also preserves homeowner's rights under landlord-tenant law.

The Committee was informed that in some mobile home parks, park operators are making it difficult for homeowners to sell their home, and are doing so by restricting access to the home by prospective buyers or real estate agents, and by having rules prohibiting or restricting 'for sale' signs in the park. Also, since many of the lease agreements between park owners and homeowners are oral rather than written, homeowners sometimes find out after placing the home on the site that there are additional fees for services, or that there are rules governing the park that may be problematic for these homeowners. The original AARP proposal required that: lease agreements be in writing, fees for services be clearly defined, park rules be provided to homeowners in writing, and that park owners may not unreasonably restrict the sale of a home or the advertising for the sale. After discussion about the proposal and views opposed to it, the Committee found that: (1) Owners of manufactured homes should be able to sell their homes without unreasonable interference from park owners, (2) park owners are not required to lease space to persons who buy the home from a park resident, (3) it is reasonable and appropriate to require clearly defined services for which fees are charged and to notify residents of park rules, and (4) a written requirement for agreements between park owners and home owners is not appropriate since landlord-tenant law does not require written leases for other types of residential tenancies. The proposal was amended to remove the requirement of a written agreement, and was approved as amended.

**RECOMMENDATION FOUR:** The General Assembly should enact the bill found in Appendix F, which establishes priority for payment of liability claims for rental cars under certain circumstances. The bill provides that if a liability claim arises as the result of an event wherein the driver of the rental car was not authorized by the rental car company to drive the car, then priority for payment of the claim will be:

**first, the unauthorized driver's policy; if no policy, then second, the policy of the authorized driver if that driver gave the unauthorized driver permission to drive the car; if no permission or no policy, then third, the rental car company's policy pays the claim.**

This proposal was brought to the Committee's attention by the rental car industry. The industry is looking for relief under circumstances where one of its vehicles is operated by a person not authorized as a driver under the rental contract, either through unlawful act or through unauthorized permission by the authorized driver, and the unauthorized operator is at fault in an accident. In the industry's view, liability for ensuing claims ought to be covered not by the rental car company, but by the unauthorized driver's policy. The Committee approved the proposal upon a finding that the bill was redrafted to more clearly restrict the circumstances under which priority for liability claims is being reordered. The reordering occurs only when: the rental car company is authorized to do business in this State, the driver of the vehicle when the liability claim arose was not authorized by the rental car company to drive the vehicle, and there is alternative coverage available for the unauthorized driver, or for an authorized driver who permitted the unauthorized driver to operate the vehicle.

**RECOMMENDATION FIVE: The General Assembly should enact the bill found in Appendix G, which establishes an independent, permanent consumer protection study commission. The bill provides for: appointment of 17 members, 14 legislators and 3 public members; establishes purpose, authority and reporting requirements of the commission; authorizes commission to contract for services and to meet in Legislative Building or Legislative Office Building. The bill appropriates \$25,000 in each year of the 1995 biennium for the commission's work.**

The Committee finds that there are many areas of commerce in which consumers encounter serious problems in getting satisfactory goods or service, or in being made fully aware of the terms and conditions of consumer agreements they execute. Although there are offices in certain departments of State government that field consumer concerns, those offices have a rather narrow scope of jurisdiction; thus many consumers do not have a centralized location for bringing their concerns to the attention of State officials. A permanent consumer protection study commission would provide consumers with an ongoing forum for informing State officials of all types of consumer problems that may need addressing through statewide legislation. Moreover, the commission would also hear concerns of the business community and may facilitate collaboration and cooperation of the public and private sector in addressing the concerns.

**RECOMMENDATION SIX:** The General Assembly should authorize further study of problems encountered by purchasers of used cars. The Committee heard testimony from used car purchasers, consumer protection attorneys, and used car dealers indicating that there are problems in the industry that need attention. For example, attorneys and consumers believe dealers need to do a better job of disclosing problems with vehicles they sell, such that the consumer is made aware of potential hidden defects in cars that are not being sold "AS IS". The Committee believes that warranties for used cars should not be required at this time; however, the Committee feels strongly that the problems that do exist need to be addressed with appropriate legislation and enforcement. Thus, the Committee strongly urges the General Assembly to enact legislation establishing a permanent consumer protection study committee and, if enacted, the General Assembly should direct that committee to study and report on consumer problems with used car sales.



## APPENDIX A

### HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

#### **PART I.-----TITLE**

Section 1. This act shall be known as "The Studies Act of 1993".

#### **PART II.-----LEGISLATIVE RESEARCH COMMISSION**

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (1) Education Support Services (H.B. 11 - Fussell, S.B. 13 - Martin of Guilford),
- (2) Water Issues-Surface Water and Groundwater -- study continued (H.J.R. 52 - Fussell, S.J.R. 67 - Tally),
- (3) Alternative Approaches to Deal with Discrimination in Employment -- study continued (H.B. 54 - Kennedy),
- (4) Solid Waste Management -- study continued (H.J.R. 69 - R. Thompson, S.J.R. 56 - Odom),
- (5) Emergency Management Issues -- study continued (H.B. 88 - Hightower, S.B. 75 - Parnell),
- (6) State Real Property Transfers -- study continued and expanded, (H.B. 92 - Bowman, S.B. 756 - Sherron),
- (7) Ways to Promote Energy Conservation and the Use of Renewable Sources of Energy in North Carolina -- study continued (H.J.R. 104 and H.J.R. 150 - Bowman, S.B. 337 - Plexico),
- (8) Mountain Area Study (H.B. 117 - Crawford, S.B. 85 - Hyde),
- (9) Revenue Laws -- study continued (H.J.R. 123 - Jarrell),
- (10) Criminal Case Disposition (H.B. 127 - Michaux, S.B. 250 - Soles),
- (11) State Parks and Recreation Areas (H.B. 149 - DeVane),
- (12) Information Technology (H.B. 172 - Bowman, S.B. 741 - Sherron),
- (13) Fire and Occupational Safety Issues -- study continued (H.J.R. 191 - Fitch, S.J.R. 107 - Plyler),
- (14) State Personnel (H.B. 196 - Fitch, S.B. 119 - Johnson),

- (15) Child Care Issues (H.B. 213 - Rogers, S.B. 89 - Walker),
- (16) Need to Establish a College of Chiropractic in North Carolina (H.B. 224 - Black, S.B. 223 - Conder),
- (17) Immunity from Liability Resulting from Negligent Acts (H.B. 242 - Nye and Jeffus),
- (18) Fiscal Trends and Reform (H.B. 267 - Diamont, S.B. 194 - Perdue),
- (19) Child Support (H.B. 272 - Diamont, S.B. 314 - Martin of Guilford),
- (20) Public Health Programs Organization (H.B. 289 - Blue, S.B. 298 - Martin of Guilford),
- (21) Reducing the Legal Limit of Blood Alcohol from 0.10 to 0.02 for 18 to 20 Year Olds While Driving a Motor Vehicle (H.B. 366 - Easterling),
- (22) Model Employment Termination Act (H.B. 384 - Beall),
- (23) Recycling and Composting Poultry Mortalities (H.B. 421 - James),
- (24) Unfunded Mandates to Counties and Cities (H.B. 433 - Joye),
- (25) Ways to Improve Guardianship Services (H.B. 451 - Gottovi),
- (26) Law Regulating Mortgage Bankers and Mortgage Brokers (H.B. 464 - Smith and Brubaker),
- (27) Development of a Lead Hazard Management Program in the State (H.B. 623 - Moore),
- (28) Family Law Reform (H.J.R. 705 - R. Thompson),
- (29) Health and Fitness Club Issues (H.J.R. 714 - G. Thompson),
- (30) Bid Laws and Reciprocity (H.B. 716 - Daughtry),
- (31) Voter Registration (H.B. 778 - Michaux),
- (32) Rental Vehicle Insurance (H.B. 798 - Stamey),
- (33) Emergency Cardiac Care (H.J.R. 805 - Green),
- (34) Need for a Property Owners' Association Act (H.B. 919 - R. Thompson),
- (35) Tobacco Warehouse (H.B. 889 - Bowen),
- (36) All-Terrain Vehicles Licensing and Regulation (H.B. 1006 - Smith),
- (37) Public Assistance Direct Deposit (H.B. 1022 - Spears),
- (38) Residential Property Disclosure Act (H.B. 1032 - Hensley),
- (39) Professional Firefighters Early Retirement Incentives (H.B. 1033 - Hensley),
- (40) Restitution Policy as a Part of Criminal Justice System (H.B. 1035 - Michaux),
- (41) Farmland Preservation Enabling Act, including Dairy Farmer Economic Issues (H.J.R. 1060 - Colton),
- (42) Alcoholic Beverage Control Laws (H.B. 1093 - Hensley),
- (43) Literacy (H.B. 1131 - Gottovi),
- (44) Business Tax Credits for Purchases of Recycled Products (H.B. 1132 - Gottovi),
- (45) Divorce Education Program for Couples with Children (H.B. 1148 - Alexander),

- (46) Recreational Hook-and-Line Fishing License in Coastal Fishing Waters and Use of Commercial Nets (H.B. 1156 - Bowman),
- (47) Insurance Coverage for Biologically Based Brain Diseases (H.B. 1161 - Alexander),
- (48) Bingo (H.B. 1190 - Flaherty),
- (49) Liabilities of Registers of Deeds under the Torrens Land Registration System (H.J.R. 1194 - Redwine),
- (50) Public Transportation and Railroads (H.J.R. 1225 - Luebke),
- (51) Effect of the Use of Commercial Nets on Fish and Shellfish Stocks and their Estuarine Habitats (H.J.R. 1282 - Richardson),
- (52) Disaster Relief Volunteer Protection (H.B. 1283 - Redwine, S.B. 1192 - Doyle),
- (53) Representation of Extraterritorially Zoned Areas (H.J.R. 1284 - Ellis),
- (54) Consumer Protection Issues (H.J.R. 1303 - Spears; H.B. 1453 Easterling),
- (55) Application of Chiropractic Care for the Cost-Effective Delivery of Health Care (H.J.R. 1309 - Stamey, S.J.R. 1156 - Odom),
- (56) Issues Relating to Pilot Programs (H.J.R. 1319 - Ramsey),
- (57) Cemetery Commission and the Regulation of Cemeteries in the State (H.B. 1320 - Hill),
- (58) Advisability of Protecting Purchasers of Used Motor Vehicles and of Extending Warranties to the Sale or Lease of Used Motor Vehicles (H.J.R. 1324 - Beall),
- (59) Temporary Employment in the State (H.B. 1351 - Holt),
- (60) Tort Reform (H.J.R. 1378 - Gamble),
- (61) East Carolina University School of Medicine's Potential Scope and Focus for the Next Decade (H.J.R. 1389 - Gamble),
- (62) Alternate Election Systems (H.J.R. 1397 - Luebke),
- (63) Health Care Insurance Coverage for Chemical Dependency (H.J.R. 1411 - Alexander),
- (64) Medicaid (H.J.R. 1412 - Alexander),
- (65) Exactions (H.B. 1413 - Richardson, S.B. 1181 - Conder),
- (66) Historic Preservation Crafts Training in North Carolina (H.J.R. 1426 - Colton),
- (67) Juvenile Code (H.J.R. 1429 - Hensley),
- (68) Recovery Care Centers and Their Role in Developing a System of Affordable, Quality Health Care (H.J.R. 1434 - Richardson, S.J.R. 1172 - Parnell),
- (69) Disposition of Public Historic Structures (H.J.R. 1447 - Colton),
- (70) Equitable Distribution (H.J.R. 1452 - Easterling),
- (71) Consumer Protection Issues (H.B. 1453 - Easterling),
- (72) Long-Term Care Issues (H.J.R. 1456 - Gardner),
- (73) Constitutional Review (S.B. 21 - Lee),

- (74) Barrier to Meeting Human Services Needs Because of Confidentiality Requirements Set Out in State and Federal Laws and Regulations (S.J.R. 22 - Martin of Guilford),
- (75) Comprehensive Transportation Funding (S.B. 165 and S.B. 166 - Martin of Guilford),
- (76) UNC Board of Governors Appointment Process (S.J.R. 390 - Martin of Guilford),
- (77) Legislative Compliance Review (S.B. 395 - Perdue),
- (78) Physical Fitness Among Youth (S.B. 443 - Warren),
- (79) Fletcher-Jerals Omnibus Health Reform Act of 1993 (S.B. 554 - Daniel),
- (80) Workers' Compensation (S.B. 587 - Simpson),
- (81) Law Officer Conduct Review System (S.B. 683 - Richardson of Mecklenburg),
- (82) Partnership for Quality Growth (S.B. 736 and S.B. 737 - Sherron),
- (83) Certificates of Participation (S.B. 739 - Sherron),
- (84) Development of Markets for Animal Residues (S.B. 956 - Albertson),
- (85) Family Law Reform (S.J.R. 993 - Perdue),
- (86) Legal Research (S.B. 1092 - Martin of Guilford),
- (87) Medical Malpractice Compensation (S.J.R. 1159 - Ballance),
- (88) Forfeitures and Fines Clear Proceeds Allocation (S.J.R. 1167 - Ballance),
- (89) State Purchasing (S.B. 1178 - Sherron),
- (90) Alternative Schools (S.B. 1200 - Gunter),
- (91) Minority Males (S.B. 1236 - Martin of Guilford),
- (92) Medicaid Eligibility Requirements (S.B. 1251 - Marshall),
- (93) Economic Impact of Rules (S.B. 1261 - Sherron),
- (94) African-American Cultural Center (S.B. 1262 - Jordan),
- (95) Early Retirement Penalty Reduction for Members of the Teachers' and State Employees' Retirement System (S.B. 1264 - Harris),
- (96) Fire Fighter Benefits (S.B. 1266 - Sherron),
- (97) Alternative Revenue Sources for State Government (S.B. 1268 - Kaplan),
- (98) Regional Government and Economic Development Zones (S.B. 1269 - Kaplan),
- (99) North American Free Trade Agreement Impact on North Carolina (S.B. 1271 - Kaplan),
- (100) Health Care Reform (S.B. 1293 - Daniel), and
- (101) Wastewater Discharge Requirements at Public Schools (S.B. 1295 - Daniel).

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

**Sec. 2.3. Reporting Dates.** For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

**Sec. 2.4. Bills and Resolution References.** The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

**Sec. 2.5. Funding.** From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

### **PART III.-----MENTAL HEALTH STUDY COMMISSION**

(H.B. 305 - Lutz, S.B. 400 - Harris)

**Sec. 3.1.** The Mental Health Study Commission, established and structured by 1973 General Assembly Resolution 80; Chapter 806, 1973 Session Laws; Chapter 185, 1975 Session Laws; Chapter 184, 1977 Session Laws; Chapter 215, 1979 Session Laws; 1979 General Assembly Resolution 20; Chapter 49, 1981 Session Laws; Chapter 268, 1983 Session Laws; Chapter 792, 1985 Session Laws; Chapter 873, 1987 Session Laws; Chapter 802, 1989 Session Laws; and Chapter 754, 1991 Session Laws, is reestablished and authorized to continue in existence until July 1, 1995.

**Sec. 3.2.** The continued Mental Health Study Commission shall have all the powers and duties of the original Study Commission as they are necessary to continue the original study, to assist in the implementation of the original and succeeding Study Commission recommendations, and to plan further activity on the subject of the study.

**Sec. 3.3.** Members and staff of the continued Mental Health Study Commission shall receive compensation and expenses delineated by the original authorization in the 1973 General Assembly Resolution 80. Expenses of the Commission shall be expended by the Department of Human Resources from Budget Code 14460 subhead 1110.

**Sec. 3.4.** In addition to other studies authorized by law, the Mental Health Study Commission shall:

- (1) Exercise oversight of, and make recommendations regarding the implementation of the Adult Substance Abuse Plan, the Comprehensive Long Range Plan for Adults with Severe and Persistent Mental Illness, the Child Mental Health Plan, the Child and Adolescent Alcohol and Other Drug Abuse Plan, and the Developmental Disabilities Services Plan;
- (2) Exercise oversight of, and make recommendations regarding implementation of the Quality Improvement Initiative endorsed by the Mental Health Study Commission;
- (3) Monitor implementation of Commission recommendations to improve mental health, developmental disabilities, and substance abuse services to criminal justice offenders;

- (4) Exercise oversight of, and make recommendations regarding the implementation of the Pioneer Funding System and the funding initiatives to maximize the use of federal and private dollars to support mental health, developmental disabilities, and substance abuse services;
- (5) Identify and recommend effective model programs for implementation in each of the Mental Health Study Commission Plans;
- (6) Develop a business initiative to increase awareness about the crisis in the mental health system and to build partnerships for creating an effective response; and
- (7) Review major initiatives for children for integration with the Child Mental Health Plan.

**PART IV.-----JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE TO STUDY SHELLFISH LEASING PROGRAM**

(H.B. 810 - Smith)

Sec. 4.1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study and evaluate the shellfish leasing program and determine whether modifications should be made to the program. The Commission shall report its findings and recommendations to the 1995 General Assembly.

**PART V.-----ENVIRONMENTAL REVIEW COMMISSION TO STUDY ENVIRONMENTAL JUSTICE**

(H.B. 1423 - Fitch)

Sec. 5.1. The Environmental Review Study Commission shall study:

- (1) The advantages and disadvantages of adopting as a requirement that future applicants for solid waste, hazardous waste, low-level radioactive waste, and any other environmental permits provide State agencies with socioeconomic and demographic data on the community affected by the permit;
- (2) The current criteria for siting solid waste, hazardous waste, and low-level radioactive waste management facilities; the identity of major emitters of air pollution and major dischargers of wastewater in low-income and minority communities;
- (3) The advisability of adopting policies to increase the participation of low-income and minority citizens in environmental decisions;
- (4) The advisability of adopting policies to ensure fairness in the siting of solid waste, hazardous waste, and low-level radioactive waste management facilities and in the permitting of major emitters and dischargers of pollution; and
- (5) Any other issues related to achieving environmental justice that the Commission chooses to study.

Sec. 5.2. The Commission shall report its findings and any recommendations to the 1995 General Assembly.

PART VI.-----PUBLIC HEALTH STUDY COMMISSION

(S.B. 69 - Cooper)

Sec. 6.1. Chapter 120 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 22.

"The Public Health Study Commission.

"§ 120-195. Commission created; purpose.

There is established the Public Health Study Commission. The Commission shall examine the public health system to determine its effectiveness and efficiency in assuring the delivery of public health services to the citizens of North Carolina.

"§ 120-196. Commission duties.

The Commission shall study the availability and accessibility of public health services to all citizens throughout the State. In conducting the study the Commission shall:

- (1) Determine whether the public health services currently available in each county or district health department conform to the mission and essential services established under G.S. 130A-1.1;
- (2) Study the work force needs of each county or district health department, including salary levels, professional credentials, and continuing education requirements, and determine the impact that shortages of public health professional personnel have on the delivery of public health services in county and district health departments;
- (3) Review the status and needs of local health departments relative to facilities, and the need for the development of minimum standards governing the provision and maintenance of these facilities;
- (4) Propose a long-range plan for funding the public health system, which plan shall include a review and evaluation of the current structure and financing of public health in North Carolina and any other recommendations the Commission deems appropriate based on its study activities; and
- (5) Conduct any other studies or evaluations the Commission considers necessary to effectuate its purpose.

"§ 120-197. Commission membership; vacancies; terms.

(a) The Commission shall consist of 17 members, one of whom shall be the State Health Director. The Speaker of the House of Representatives shall appoint seven members, two of whom shall be selected from among the following: the UNC School of Public Health, the North Carolina Primary Care Association, the North Carolina Home Care Association, the North Carolina Pediatric Society, and the North Carolina Citizens for Public Health. Five of the Speaker's appointees shall be persons who are members of the House of Representatives at the time of their appointment, one of the five being the Representative who chairs the House standing committee related to health matters. The President Pro Tempore of the Senate shall appoint seven members, two of whom shall be selected from among the following: the North Carolina Health Directors' Association, the North Carolina Public Health Association, the Association of Public Health Nurses, the North Carolina Environmental Health Supervisors' Association, and

the North Carolina Association of Public Health Educators. Five of the President Pro Tempore's appointees shall be persons who are members of the Senate at the time of their appointment, one of the five being the Senator who chairs the Senate standing committee related to health matters. The Governor shall appoint one member from either the North Carolina Medical Society or the North Carolina Hospital Association. The Lieutenant Governor shall appoint one member from either the North Carolina Association of County Commissioners or the Association of North Carolina Boards of Health.

(b) Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section. All initial appointments shall be made within one calendar month from the effective date of this Article.

(c) Legislative members appointed by the Speaker and the President Pro Tempore shall serve two-year terms. The public members initially appointed by the Speaker and the President Pro Tempore shall each serve a three-year term. The members initially appointed by the Governor and the Lieutenant Governor shall each serve a one-year term. Thereafter, the terms of all Commission members shall be for two years.

**"§ 120-198. Commission meetings.**

The Commission shall have its first meeting not later than 60 days after adjournment of the 1993 Regular Session of the 1993 General Assembly at the call of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Commission to serve as cochair. The Commission shall meet upon the call of the cochairs.

**"§ 120-199. Commission reimbursement.**

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

**"§ 120-200. Commission subcommittees; non-Commission membership.**

The Commission cochairs may establish subcommittees for the purpose of making special studies pursuant to its duties, and may appoint non-Commission members to serve on each subcommittee as resource persons. Resource persons shall be voting members of the subcommittee and shall receive subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6.

**"§ 120-201. Commission authority.**

The Commission may obtain information and data from all State officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The Commission also may call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairs of the Commission. Any cost of providing information to the Commission not covered by

G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study.

"§ 120-202. Commission reports.

The Commission shall report to the General Assembly, the Governor, and the Lieutenant Governor the results of its study and recommendations. The Commission shall submit its written report not later than 30 days after the convening of each biennial session of the General Assembly.

"§ 120-203. Commission staff; meeting place.

The Commission may contract for clerical and professional staff or for any other services it may require in the course of its ongoing study.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building."

**PART VII.-----ELECTION LAWS REVIEW COMMISSION**

(S.B. 21 - Lee, Basnight)

Sec. 7.1. (a) There is created an Election Laws Review Commission to be composed of 18 members appointed as follows:

- (1) The President Pro Tempore of the Senate shall appoint six members;
- (2) The Speaker of the House of Representatives shall appoint six members; and
- (3) The Governor shall appoint six members.

As used in this Part and unless otherwise clearly indicated, "Commission" shall refer to the Election Laws Review Commission.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees. Either cochair may call the first meeting of the Commission.

(c) Members shall serve until the termination of the Commission or, in case of a State legislator member, until the member either does not file for reelection to the General Assembly or is not reelected, whichever occurs first. Vacancies shall be filled in the same manner as the original appointments were made.

Sec. 7.2. (a) The Election Laws Review Commission shall study thoroughly:

- (1) The election laws, policies, and procedures of the State, specifically to include those relating to campaign finance regulation, the appropriateness of their sanctions, and the appropriate handling and disposition of campaign contributions;
  - (2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws; and
  - (3) Federal and State case rulings impinging on these laws, policies, and practices.
- (b) The Commission shall recommend changes to the law that will:
- (1) Clarify the present law by removing inconsistencies and outdated provisions, including those of dubious constitutionality;

- (2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections and its Executive Secretary-Director;
- (3) Conform the law to State and federal case law and to any requirements of federal statutory law and regulation;
- (4) Ensure the efficient and effective administration of elections in this State;
- (5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand; and
- (6) Recodify the election laws, as necessary, to produce a comprehensive current statement of law and practice of elections in North Carolina.

Sec. 7.3. With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Election Laws Review Commission. Clerical staff shall be furnished to the Commission through the Offices of the House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Election Laws Review Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Sec. 7.4. The Commission may submit an interim report of its findings and recommendations and the status of its work on or before the first day of the 1994 Regular Session of the 1993 General Assembly. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 1995 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

Sec. 7.5. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

Sec. 7.6. The State Board of Elections and its Executive Secretary-Director, local boards of election, and all other State departments and agencies, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

**PART VIII.-----JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO STUDY RECENT RULINGS BY UTILITIES COMMISSION ON THE REGULATORY TREATMENT OF THE GAIN ON SALE OF WATER AND SEWER FACILITIES AND TO STUDY MUNICIPAL ELECTRIC UTILITY SYSTEMS**

(S.B. 190 - Perdue)

Sec. 8.1. (a) The Joint Legislative Utility Review Committee may study the recent rulings by the Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities, and may examine the impact of those rulings on expanding municipalities, the effect on the ratepayers of municipal utilities, and the effect on the shareholders of the water and sewer utilities. The Committee may make findings and a recommendation on the need for legislation to modify or reverse those rulings, and may report the results of its study to the 1993 General Assembly, 1994 Regular Session.

(b) The Joint Legislative Utility Review Committee may:

- (1) Study municipal electric utility systems serving customers outside the corporate limits, concentrating on the following areas:
  - a. Whether cities have successfully organized their electric utility systems to allow participation either by customers inside the corporate limits, by customers outside the corporate limits, or by customers both inside and outside the corporate limits; and
  - b. Electric rates for customers with city service compared with what those rates might be if a private utility served areas inside and outside the city that the city currently serves, such analysis also to examine what would happen to in-city rates if out-of-city customers were no longer served.

The study required by this subdivision may focus on a particular system or systems.

- (2) Study the feasibility of establishing special competitive electrical rates in North Carolina in order to attract more industries to the State.
- (3) Study the rate disparity between investor-owned electric utilities in North Carolina, and suggest methods of eliminating that disparity.
- (4) Study the need for regulation of municipal electric utility systems by the Utilities Commission.
- (5) Determine whether municipal electric utility systems are providing special rates for economic development purposes and whether such rates comply with State law.

The Committee may report its findings and any recommendations to the 1993 General Assembly, 1994 Regular Session.

#### **PART IX.-----JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO STUDY THE ISSUE OF EDUCATIONAL NEGLECT**

(S.B. 1281 - Perdue)

Sec. 9.1. The Joint Legislative Education Oversight Committee shall study the whole issue of educational neglect. The Committee shall report the results of this study, together with any legislative proposals, in its regular report to the 1995 General Assembly.

**PART X.-----BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO DEVELOP A PROPOSAL FOR A NORTH CAROLINA INSTITUTE OF GERONTOLOGY, TO EVALUATE ALL MARINE SCIENCES PROGRAMS, AND TO STUDY CONSTITUENT STATUS OF SCHOOL OF SCIENCE AND MATHEMATICS**

(S.B. 1280 - Perdue, S.B. 1282 - Perdue)

Sec. 10.1. The Board of Governors of The University of North Carolina shall study the establishment of the North Carolina Institute of Gerontology, to be located on a campus of The University of North Carolina and administered by the Board of Governors, in consultation with the State Board of Community Colleges and the North Carolina Association of Independent Colleges and Universities. The Board of Governors shall report its findings, including a detailed fiscal analysis, and recommendations to the Joint Legislative Education Oversight Committee by May 1, 1994.

Sec. 10.2. (a) The Board of Governors of The University of North Carolina shall evaluate all Marine Sciences programs offered by the constituent institutions of The University of North Carolina.

(b) This evaluation shall include:

- (1) A detailed examination of each program's effectiveness, including the number of students enrolled, graduating, and obtaining professional jobs in related areas;
- (2) An examination of duplication and overlapping of related programs throughout The University of North Carolina; and
- (3) A cost/benefit analysis of removing, combining, or expanding programs.

(c) The Board of Governors shall report this study, together with any proposals and recommendations, to the Joint Legislative Education Oversight Committee by March 1, 1994.

Sec. 10.3. (a) The Board of Governors of The University of North Carolina shall evaluate the status of the North Carolina School of Science and Mathematics as an affiliated school of The University of North Carolina. As part of this review, the Board shall determine whether the School's purposes, as established in G.S. 116-232, would be carried out more effectively if the School was established as a constituent institution of The University of North Carolina, as defined in G.S. 116-2(4).

(b) The Board of Governors shall report this study, together with any proposals and recommendations, to the Joint Legislative Education Oversight Committee by March 1, 1994.

**PART XI.-----APPROPRIATION FOR STUDIES**

Sec. 11.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by this act.

**PART XII.-----EFFECTIVE DATE**

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

## APPENDIX B

### MEMBERSHIP OF LRC COMMITTEE ON CONSUMER PROTECTION

**LRC Member**            Rep. Bertha M. Holt  
P.O. Box 1111  
Burlington, NC 27216  
(919)227-7333

#### President Pro Tempore's Appointments

Sen. Fred Folger, Jr., Cochair  
P.O. Box 428  
Mount Airy, NC 27030  
(910)789-2191

Mr. Ricky Harrell  
Perdue Farms, Inc.  
P.O. Box 460  
Lewiston, NC 27849

Sen. Fletcher L. Hartsell, Jr.  
P.O. Box 368  
Concord, NC 28026-0368  
(704)786-5161

Sen. Luther Jordan, Jr.  
P.O. Box 701  
Wilmington, NC 28402  
(910)763-2441

Sen. John H. Kerr, III  
P.O. Box 1616  
Goldsboro, NC 27533-1616  
(919)734-1841

Mr. Floyd Lupton  
P.O. Box 174  
Belhaven, NC 27810

Sen. David R. Parnell  
P.O. Box 100  
Parkton, NC 28371  
(910)858-3521

#### Speaker's Appointments

Rep. Ruth M. Easterling, Cochair  
901 Queens Road, Apt. 2  
Charlotte, NC 28207  
(704)375-5934

Rep. Charles M. Beall  
Rt. 3, Box 322  
Clyde, NC 28721-9542  
(704)627-2423

Rep. E. Nelson Cole  
P.O. Box 2309  
Reidsville, NC 27323-2309  
(910)342-9580

Mr. Clayton Rawn  
5452 Gunpowder Drive  
Hickory, NC 28601

Mr. Robert M. Schofield  
3404 Wembley Court  
Raleigh, NC 27607

Rep. Kenneth O. Spears, Jr.  
Rt. 1, Box 420A  
Fayetteville, NC 28301  
(910)323-8780

Rep. Gregory J. Thompson  
P.O. Box 574  
Spruce Pine, NC 28777  
(704)765-1992

Rep. Connie K. Wilson  
726 Lansdowne Road  
Charlotte, NC 28270  
(704)364-2311

**Staff:**

**Ms. Gann Watson  
Bill Drafting Division  
(919)733-6660**

**Clerk:**

**Ms. Gayle Christian  
Rm. 640 Legislative Office Bldg  
(919)733-5858**

H/S

D

95-LNZ-009

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Regulate Check Cashing.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE CHECK CASHING BUSINESSES.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. Effective October 1, 1995, Chapter 53 of the  
5 General Statutes is amended by adding the following new Article  
6 to read:

7 "Article 22.  
8 "Check Cashing Businesses.

9 "§ 53-275. Definitions.

10 As used in this Article, unless the context clearly requires  
11 otherwise, the term:

12 (1) 'Check cashing service' means any person or entity  
13 engaged in the business of cashing checks, drafts,  
14 or money orders for a fee, service charge, or other  
15 consideration.

16 (2) 'Commission' means the North Carolina Banking  
17 Commission.

18 (3) 'Commissioner' means the Commissioner of Banks.

19 (4) 'Licensee' means a person or entity licensed to  
20 engage in a check cashing business under this  
21 Article.

22 (5) 'Person' means an individual, partnership,  
23 association, or corporation.

24 "§ 53-276. License required.

1 No person or other entity may engage in the business of cashing  
2 checks, drafts, or money orders for consideration without first  
3 obtaining a license under this Article.

4 "§ 53-277. Exemptions.

5 This Article shall not apply to:

6 (1) A bank, savings institution, credit union or farm  
7 credit system organized under the laws of the  
8 United States or any state; and

9 (2) Any person or entity principally engaged in the  
10 bona fide retail sale of goods or services, who  
11 either as an incident to or independently of a  
12 retail sale or service and not holding itself out  
13 to be a check cashing service, from time to time  
14 cashes checks, drafts, or money orders for a fee or  
15 other consideration, where not more than two  
16 dollars (\$2.00) is charged for the service.

17 "§ 53-278. Application for license; investigation; application  
18 fee.

19 (a) An application for licensure under this Article shall be in  
20 writing, under oath, and on a form prescribed by the  
21 Commissioner. The application shall set forth:

22 (1) The name and address of the applicant;  
23 (2) If the applicant is a firm or partnership, the name  
24 and address of each member of the firm or  
25 partnership;

26 (3) If the applicant is a corporation, the name and  
27 address of each officer, director, registered  
28 agent, and principal;

29 (4) The addresses of the locations of the business to  
30 be licensed; and

31 (5) Such other information concerning the financial  
32 responsibility, background, experience, and  
33 activities of the applicant and its members,  
34 officers, directors, and principals as the  
35 Commissioner requires.

36 (b) The Commissioner may make such investigations as the  
37 Commissioner deems necessary to determine if the applicant has  
38 complied with all applicable provisions of this Article and State  
39 and federal law.

40 (c) The application shall be accompanied by payment of a five  
41 hundred dollar (\$500.00) application fee and a five hundred  
42 dollar (\$500.00) investigation fee. These fees are not refundable  
43 or abatable, but, if the license is granted, payment of the

1 application fee shall satisfy the fee requirement for the first  
2 license year or remaining part thereof.

3 (d) Licenses shall expire annually and may be renewed upon  
4 payment of a license fee of five hundred dollars (\$500.00) plus a  
5 one hundred dollar (\$100.00) fee for each branch location  
6 certificate issued under a license, and compliance with this  
7 Article and applicable State and federal law.

8 "§ 53-279. Liquid Assets required; other qualifications; denial  
9 of license; appeal to Commission.

10 (a) Every licensee and applicant shall have and maintain liquid  
11 assets of at least twenty-five thousand dollars (\$25,000) per  
12 licensee.

13 (b) Upon the filing and investigation of an application, and  
14 compliance by the applicant with G.S. 53-277, 53-278, and this  
15 section, the Commissioner shall issue and deliver to the  
16 applicant the license applied for to engage in business under  
17 this Article at the locations specified in the application,  
18 provided that the Commissioner finds that the financial  
19 responsibility, character, reputation, experience, and general  
20 fitness of the applicant and its members, officers, directors,  
21 and principals are such as to warrant belief that the business  
22 will be operated efficiently and fairly, in the public interest,  
23 and in accordance with law. If the Commissioner fails to make  
24 such findings, no license shall be issued, and the Commissioner  
25 shall notify the applicant of the denial and the reasons  
26 therefor. The applicant shall be entitled to an informal hearing  
27 on the denial provided the applicant requests the hearing in  
28 writing within 30 days after the Commissioner has mailed the  
29 notice required under this subsection to the applicant. In the  
30 event of a hearing, which shall be held in the offices of the  
31 Commissioner of Banks in Raleigh, the Commissioner shall  
32 reconsider the application and, after hearing, issue a written  
33 order granting or denying the application.

34 "§ 53-280. Maximum fees for service; fees posted; endorsement of  
35 checks cashed.

36 (a) No check cashing business licensed under this Article shall  
37 directly or indirectly charge or collect fees or other  
38 consideration for check-cashing services in excess of the  
39 following:

40 (1) Two percent (2%) of the face amount of the check or  
41 five dollars (\$5.00), whichever is greater, for  
42 checks issued by the federal government, State  
43 government, or any agency of the State or federal

1 government, or any county or municipality of this  
2 State;

3 (2) Ten percent (10%) of the face amount of the check  
4 or five dollars (\$5.00), whichever is greater, for  
5 personal checks; or

6 (3) Five percent (5%) of the face amount of the check  
7 or money order or five dollars (\$5.00), whichever  
8 is greater, for all other checks, or for money  
9 orders.

10 (b) A licensee shall ensure that in every location conducting  
11 business under a license issued under this Article, there is  
12 conspicuously posted and at all times displayed a notice stating  
13 the fees charged for cashing checks, drafts, and money orders. A  
14 licensee shall further ensure that notice of the fees currently  
15 charged at every location shall be filed with the Commissioner.

16 (c) Checks, drafts, and money orders cashed at every location  
17 conducting business under a license issued under this Article  
18 shall be deposited or presented for payment within three days of  
19 the date the check is cashed for the customer. A licensee shall  
20 endorse every check, draft, or money order presented by the  
21 licensee for payment in the name of the licensee.

22 "§ 53-281. Recordkeeping, receipt requirements.

23 (a) Every person required to be licensed under this Article  
24 shall maintain in its offices such books, accounts, and records  
25 as the Commissioner may reasonably require. The Commissioner may  
26 examine the books, accounts, and records in order to determine  
27 whether the person is complying with this Article and rules  
28 adopted pursuant thereto. The books, accounts, and records shall  
29 be maintained separate from any other business in which the  
30 person is engaged, and shall be retained for a period prescribed  
31 by the Commissioner.

32 (b) The licensee shall ensure that each customer cashing a  
33 check shall be provided a receipt showing the name or trade name  
34 of the licensee, the transaction date, amount of the check, and  
35 the fee charged.

36 "§ 53-282. Prohibited practices.

37 No person required to be licensed under this Article shall:

38 (1) Charge fees in excess of those authorized under  
39 this Article;

40 (2) Engage in the business of making loans of money,  
41 credit, goods, or things; or discounting notes,  
42 bills of exchange, items, or other evidences of  
43 debt; or accepting deposits or bailments of money  
44 or items;

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**FOR REVIEW ONLY**

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- 1           (3) Hold checks cashed by customers for more than three  
2           days before depositing or presenting the checks for  
3           payment;  
4           (4) Cash items in a face amount exceeding two thousand  
5           five hundred dollars (\$2,500);  
6           (5) Use or cause to be published or disseminated any  
7           advertising communication which contains any false,  
8           misleading, or deceptive statement or  
9           representation;  
10          (6) Conduct business at premises or locations other  
11          than locations licensed by the Commissioner;  
12          (7) Engage in unfair, deceptive, or fraudulent  
13          practices;  
14          (8) Cash a check, draft, or money order made payable to  
15          a payee other than a natural person unless the  
16          licensee has previously obtained appropriate  
17          documentation from the executive entity of the  
18          payee clearing indicating the authority of the  
19          natural person or persons cashing the check, draft,  
20          or money order on behalf of the payee.

21 **"§ 53-283. Suspension and Revocation of License; grounds;**  
22 **procedure.**

23       (a) The Commissioner may suspend or revoke any license or  
24 licenses issued pursuant to this Article if, after notice and  
25 opportunity for hearing, the Commissioner issues written findings  
26 that the licensee has:

- 27           (1) Violated this Article or applicable State or  
28           federal law or rules;  
29           (2) Made a false statement on the application for a  
30           license under this Article;  
31           (3) Refused to permit investigation by the Commissioner  
32           authorized under this Article;  
33           (4) Failed to comply with an order of the Commissioner;  
34           (5) Demonstrated incompetency or untrustworthiness to  
35           engage in the business of check cashing; or  
36           (6) Been convicted of a felony or misdemeanor involving  
37           fraud, misrepresentation, or deceit.

38       (b) The Commissioner may not suspend or revoke any license  
39 issued under this Article unless the licensee has been given  
40 notice and opportunity for hearing in accordance with Article 3A  
41 of Chapter 150B of the General Statutes.

42 **"§ 53-284. Cease and desist orders.**

43       If the Commissioner determines that a person required to be  
44 licensed under this Article has violated this Article or rules

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1 adopted pursuant to it, ~~then the Commissioner may~~ upon notice  
2 and opportunity for hearing in accordance with Article 3A of  
3 Chapter 150B of the General Statutes, order the person to cease  
4 and desist from the violations and to comply with this Article.  
5 The Commissioner may enforce compliance with an order issued  
6 pursuant to this section by the imposition and collection of  
7 civil penalties authorized under this Article.

8 "§ 53-285. Civil penalties and restitution.

9 The Commissioner may order and impose civil penalties upon any  
10 person required to be licensed under this Article for violations  
11 of this Article or rules adopted thereunder. Civil penalties  
12 shall not exceed one thousand dollars (\$1,000) per violation.  
13 All civil money penalties collected under this Article shall be  
14 deposited in the General Fund. The Commissioner may also order  
15 repayment of unlawful or excessive fees charged to customers.

16 "§ 53-286. Criminal penalties.

17 Any person who acts as a check casher without obtaining a  
18 license under this Article shall be guilty of a Class I felony.  
19 Each transaction involving the unlawful cashing of a check shall  
20 constitute a separate offense.

21 "§ 53-287. Commissioner to adopt rules.

22 The Commissioner may adopt rules necessary to carry out the  
23 purposes of this Article, to provide for the protection of the  
24 public, and to assist licensees in interpreting and complying  
25 with this Article.

26 "§ 53-288. Commissioner may review rules, orders, acts by

27 Commissioner.

28 The Commission shall have full authority to review any rule,  
29 regulation, order, or act of the Commissioner done pursuant to or  
30 with respect to the provisions of this Article and any person  
31 aggrieved by any such rule, regulation, order, or act may appeal  
32 to the Commission for review upon giving notice in writing within  
33 20 days after such rule, regulation, order, or act complained of  
34 is adopted, issued or done."

35 Sec. 2. This act is effective upon ratification.

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**SUMMARY FOR REVIEW ONLY**  
**REGULATE CHECK CASHING BUSINESSES**

This bill requires that all businesses engaged in providing check cashing services to the general public be licensed by the Commissioner of Banks. The bill sets forth the requirements for licensure, limits fees that may be charged by the licensee, requires recordkeeping, prohibits certain practices, and provides civil and criminal penalties for violations. Section 1 of the bill establishes a new Article under Chapter 53 of the General Statutes.

<u>G.S. Section #</u>	<u>Description</u>
<del>53-275</del>	Defines terms used in the article.
53-276	Provides that, <b>effective October 1, 1995</b> , no person may engage in business of cashing checks for a fee without obtaining a license from Commission of Banks.
53-277	Exempts following from licensure requirement: banks, S&Ls, and credit unions; retailer who cashes check as a courtesy and for a fee not exceeding \$2.00/check; entities who cash checks free of charge.
53-278(a)	Sets out requirements for license application.
53-278(b)	Requires Commissioner of Banks to investigate licensees to ensure compliance with statutory requirements.
53-278(c)	Authorizes application and investigation fees.
53-278(d)	Authorizes annual renewal fees.
53-279(a)	Requires applicant for license to have liquid assets of \$25,000 per licensee.
53-279(b)	Commissioner must issue license if applicant has complied with all statutory requirements, including finding by Commissioner that applicant demonstrates financial responsibility, good character and reputation, experience, and general fitness, and that the business will be operated efficiently, fairly, and in the public interest. If Commissioner denies license, applicant entitled to informal hearing.
53-280(a)	Establishes maximum fees a licensee may charge for services: <ol style="list-style-type: none"><li>(1) Greater of 2% of face amount or \$5, for government check;</li><li>(2) Greater of 10% of face amount or \$5, for personal check;</li><li>(3) Greater of 5% of face amount or \$5, for other checks.</li></ol>
53-280(b)	Licensee must post fees and must file list of fees with Commissioner.
53-280(c)	Licensee must deposit check within three days of the date the check is cashed. Checks must be endorsed in licensee's name.

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**FOR REVIEW ONLY**

- 53-281 Requires licensee to maintain records and to issue receipt to customer.
- 53-282 Lists prohibited practices. Licensee may not: violate the Article, engage in business of making loans, cash checks in face amount exceeding \$2,500, advertise in false, misleading, or deceptive manner.
- 53-283 Commissioner may, upon written findings, suspend or revoke license on specified grounds; licensee must have opportunity for hearing.
- 53-284 Commissioner may issue cease and desist order.
- 53-285 Commissioner may impose civil penalties for violation of article; penalties may not exceed \$1,000 per violation.
- 53-286 Business operating without a license subject to prosecution for Class I felony.
- 53-287/288 Commissioner of Banks to adopt rules to implement article. Banking Commission may review Commissioner's rules. Persons aggrieved by rules may appeal to Banking Commission.

Section 2 makes the act effective upon ratification.

STATES THAT LICENSE  
CHECK CASHING SERVICES

(1) State	(2) Year Enacted	(3) Auth'd Agency	(4) Fee for License	(5) Limits Fee for Service	(6) Assets/Bond Req'd	(7) Hold Check	(8) Penalty	(9) Exempt
CONN.	1958	Banking	\$1,000.	1%-Gov't checks; Other-Comr. sets	No	N/A	Unfair Trade Practice	Bank, or no fee, or Incid.= \$.50 max
DELAWARE	1935	Banking	\$200 Lic \$150 Inv.	2% or \$4. Post fees	\$5,000 B \$5,000 assets	No post-dated	Crim.= \$500	Bank, or no fee, or Incid.= \$.10/max
GEORGIA	1990	Banking	\$250/max	3% or \$5 if Gov't; 10% or \$5 personal; 5% or \$5 other.	Bond	24 hrs. max.	Misdem.	Bank, or no fee, or Incid. = 1% or \$1 max
INDIANA	1986	Fin.Inst.	Agency sets	10% or \$5	\$10,000 assets	N/A	Civil = \$5,000	Bank, or no fee, or Incid.= 1% or \$1
KENTUCKY	1992	Fin.Inst.	\$500 Inv. \$500 Lic.	No	\$100,000 net wrth	N/A	Misdem. \$100-500	Bank, or no fee, or Incid.
MASS.	1993	Banking	Agency sets	No limit file w/ Commr.	No	N/A	Crim.= \$500/1yr	Bank, or no fee, or Incid.= \$1/max

STATES THAT LICENSE  
CHECK CASHING SERVICES

(1) State	(2) Year Enacted	(3) Auth'd Agency	(4) Fee for License	(5) Limits Fee for Service	(6) Assets/Bond Req'd	(7) Hold Check	(8) Penalty	(9) Exempt
MINN.	1989	Commerce See note (10)	\$250 App. \$50 Lic.	Comr.sets must be reasonable	\$10,000 Bond	No post-date	Civil Liab.= act.damg Misdem.	Bank, or no fee, or Incid. = \$1 or 1%
N.J.	1951	Banking	\$100 Inv. \$1,000 Lic.	1% in-State 1.5% or .50 other, but \$8/max.	\$50,000 Bond	No Post-date	\$1,000	Banks, or no fee, or Incidental to other svce.
N.Y.	1944	Supt.of Banks	\$250 Inv. \$350 Lic.	Agency sets	\$10,000 assets	No post-date	Misdem.	Banks, or no fee, or Incid.=.50 max.
R.I.	1992	Banking	\$200 Inv. \$200 Lic.	3% or \$5 Gov't. 10% or \$5 Personal 5% or \$5 Other	\$10,000 assets	OK if surety bond	Misdem. \$100-\$500	Banks, or no fee, or Incid.=\$.50
TEXAS	1991	Banking	Commr.sets	No	\$25,000 Bond	N/A	Felony Civil= \$5,000	Banks, or no fee, or Incid.
WASH.	1991	Banking	Supervisor sets	No	Bond	N/A	Misdem.	Bank, or no fee, or Incid.

STATES THAT LICENSE  
CHECK CASHING SERVICES

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
State	Year Enacted	Auth'd Agency	Fee for License	Limits Fee for Service	Assets/Bond Req'd	Hold Check	Penalty	Exempt
WISC.	1945	Banking	\$100 Inv. \$100 Lic.	No	\$5,000 B Insure ag.loss	No hold	Revoke Lic.	Bank, or no fee, or Incid.

**NOTES:**

(1) **State:** List includes selected states that regulate check cashing services. It does not include all states that have or are considering such regulation.

(2) **Date the statute was first enacted;** many have since been amended. Information is current law.

(3) **Auth'd. Agency:** The State agency charged with regulating licensees. Most authorization includes investigation of applicants, examination of books and records, adoption of rules, suspension and revocation authority, cease and desist orders, injunctive relief, etc. In most states, applicants for licensure must demonstrate: financial responsibility, need for the service in the community, no felony convictions, good character. Additional detail on requirements for licensure may be contained in agency regulations.

(4) **Fee for license:** Some states set the fees for application, investigation, examination, initial license, and renewal. Others authorize Commissioner to set fees.

(5) **Limits fee for service:** Indicates whether the statute establishes a limit on the amount the licensee may charge to cash a check. Some states set the limits based on whether the check is a government check, personal check, or other type. "If % or \$," the fee limit is the greater of the two.

(6) **Asset/Bond:** Indicates whether the statute requires the licensee to have designated amount of assets on hand or to post surety bond.

(7) **Hold check:** Indicates whether the statute expressly limits or prohibits licensee from holding a check for a period of time. N/A means statute does not regulate, although agency rules may do so. "No post-dated" means the statute prohibits acceptance of post-dated checks in exchange for transmission of cash.

(8) **Penalty:** Indicates the penalty for violation of the statute.

STATES THAT LICENSE  
CHECK CASHING SERVICES

(9) **Exempt:** Statutes exempt from regulation: banks and other financial institutions, persons that charge no fee to cash a check, or businesses that cash checks incidental to a retail sale or other business service, e.g. "Incid. = .50/max" means that a business that cashes check incidental to its usual services is exempt so long as the charge to cash the check does not exceed the maximum (\$.50) per check.

(10) **Minnesota** provides that before an applicant may be licensed by the commissioner, the governing body of the community in which the business will be located must also approve the application. If commissioner approves but governing body fails to approve within specified time period (30 days), the application is deemed approved.

**ABBREVIATIONS:**

App. = Application  
Comr./Commr. = Commissioner  
Fin. Inst. = Financial Institutions  
Inv. = Investigation  
Lic. = License  
Misdem. = Misdemeanor  
N/A = Not in statute  
Supt. = Superintendent

**STATUTORY CITATIONS:**

CONNECTICUT	CONN. GEN. STAT. §36-564, et seq. (1994)
DELAWARE	DEL. CODE. ANN. title 5, §2702 (1993)
GEORGIA	GA. CODE. ANN. §7-1-700 (1994)
INDIANA	IND. CODE ANN. §28-8-5-1 (1994)
KENTUCKY	KY. REV. STAT. ANN. §368.010, et. seq. (1994)
MASSACHUSETTS	MASS. ANN. LAWS, Ch. 169A, §1 et seq. (1994)
MINNESOTA	MINN. STAT. 53A.07 (1994)
NEW JERSEY	N.J. STAT. 17:15A-2 (1994)
NEW YORK	N.Y. (BANKING) §367 (Consol. 1994)
RHODE ISLAND	R.I. GEN. LAWS §19-27.1-2 (1994)
TEXAS	TEXAS REV. CIVIL STAT. ANN. Art. 350 (1994)
WASHINGTON	WASH. REV. CODE §31.45.040 (1994)
WISCONSIN	WIS. STAT. ANN. §218.05 (1994)

CP2/LSCAPE

Prepared by: Gann Watson, Counsel to LRC Study Committee on Consumer Protection, 9/94.

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95-LNZ-010

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE RESIDENTIAL PROPERTY DISCLOSURE ACT.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. Effective January 1, 1996, The General  
5 Statutes are amended by adding a new Chapter to read:  
6 "Chapter 47E.  
7 "ARTICLE 1.  
8 "Residential Property Disclosure Act.  
9 "§ 47E-1-1. Applicability.  
10 This Chapter applies to the following transfers of  
11 residential real property consisting of not less than one  
12 nor more than four dwelling units, whether or not the  
13 transaction is with the assistance of a licensed real estate  
14 broker or salesman:  
15 (1) Sale or exchange,  
16 (2) Installment land sales contract,  
17 (3) Option, or  
18 (4) Lease with option to purchase, except as  
19 provided in G.S. 47E-1-2(10).  
20 "§ 47E-1-2. Exemptions.  
21 The following transfers are exempt from the provisions of  
22 this Chapter:  
23 (1) Transfers pursuant to court order, including  
24 transfers ordered by a court in administration  
25 of an estate, transfers pursuant to a writ of

- 1 execution, transfers by foreclosure sale,  
2 transfers by a trustee in bankruptcy,  
3 transfers by eminent domain, and transfers  
4 resulting from a decree for specific  
5 performance.
- 6 (2) Transfers to a beneficiary from the grantor or  
7 his successor in interest in a deed of trust,  
8 or to a mortgagee from the mortgagor or his  
9 successor in interest in a mortgage, if the  
10 indebtedness is in default; transfers by a  
11 trustee under a deed of trust or a mortgagee  
12 under a mortgage, if the indebtedness is in  
13 default; transfers by a trustee under a deed  
14 of trust or a mortgagee under a mortgage  
15 pursuant to a foreclosure sale, or transfers  
16 by a beneficiary under a deed of trust who has  
17 acquired the real property at a sale conducted  
18 pursuant to a foreclosure sale under a deed of  
19 trust.
- 20 (3) Transfers by a fiduciary in the course of the  
21 administration of a decedent's estate,  
22 guardianship, conservatorship, or trust.
- 23 (4) Transfers from one or more co-owners solely to  
24 one or more other co-owners.
- 25 (5) Transfers made solely to a spouse or a person  
26 or persons in the lineal line of consanguinity  
27 of one or more transferors.
- 28 (6) Transfers between spouses resulting from a  
29 decree of divorce or a distribution pursuant  
30 to Chapter 50 of the General Statutes or  
31 comparable provision of another state.
- 32 (7) Transfers made by virtue of the record owner's  
33 failure to pay any federal, State, or local  
34 taxes.
- 35 (8) Transfers to or from the State or any  
36 political subdivision of the State.
- 37 (9) Transfers involving the first sale of a  
38 dwelling never inhabited.
- 39 (10) Lease with option to buy contracts where the  
40 lessee occupies or intends to occupy the  
41 dwelling.

42 "§ 47E-1-3. Definitions.

43 When used in this Chapter, unless the context requires  
44 otherwise, the term:

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- 1           (1) 'Owner' means each person having recorded  
2           present or future interest in real estate that  
3           is identified in a real estate contract  
4           subject to this Chapter; but shall not mean or  
5           include the trustee in a deed of trust, or the  
6           owner or holder of a mortgage, deed of trust,  
7           mechanic's or materialman's lien, or other  
8           lien or security interest in the real  
9           property, or the owner of any easement or  
10           license encumbering the real property.
- 11           (2) 'Purchaser' means each person or entity named  
12           as 'buyer' or 'purchaser' in a real estate  
13           contract subject to this Chapter.
- 14           (3) 'Real estate contract' means a contract for  
15           the transfer of ownership of real property by  
16           the means described in G.S. 47E-1-1.
- 17           (3) 'Real property' means the lot or parcel, and  
18           the dwelling unit(s) thereon, described in a  
19           real estate contract subject to this Chapter.

20 "§ 47E-1-4. Required disclosures.

21           (a) With regard to transfers described in G.S. 47E-1-1,  
22           the owner of the real property shall furnish to a purchaser  
23           one of the following:

- 24           (1) A residential property disclaimer statement  
25           stating that the owner makes no  
26           representations as to the condition of the  
27           real property or any improvements to the real  
28           property, and that the purchaser will be  
29           receiving the real property 'as is', that is,  
30           with all defects which may exist, if any,  
31           except as otherwise provided in the real  
32           estate purchase contract; or
- 33           (2) A residential property disclosure statement  
34           disclosing those items which are required to  
35           be disclosed relative to the condition of the  
36           property and of which the owner has actual  
37           knowledge. Such disclosure form shall contain  
38           the language and be in the form set forth in  
39           subsection (b) of this section.

40           (b) A residential property disclaimer statement shall  
41           read as follows:

42           'RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

43

44           Notice to Seller and Purchaser

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The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-1-2.

NOTE TO OWNER(S): Sign this statement only if you elect to sell the property without representations as to its condition, except as otherwise provided in the purchase contract; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

Property Address/  
Legal Description:

The undersigned owner(s) of the real property described above make no representations as to the condition of the real property or any improvements on the real property, and the purchaser will be receiving the real property 'AS IS', that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract.

The Owner(s) acknowledge having examined this statement before signing below:

\_\_\_\_\_  
Owner                      Date                      Owner                      Date

The purchaser(s) acknowledge receipt of a copy of this disclaimer statement and further acknowledge that they have examined it before signing below:

\_\_\_\_\_  
Purchaser                      Date                      Purchaser                      Date'

1 (c) A residential property disclosure statement shall read as  
2 follows:

3 'RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

4  
5 Notice to Seller and Purchaser

6  
7 The North Carolina Residential Property Disclosure Act requires  
8 the owner of residential real property consisting of 1-4 units,  
9 whenever the property is to be sold, exchanged, optioned, or  
10 purchased pursuant to a lease with an option to purchase, to  
11 furnish to the purchaser either (a) a RESIDENTIAL PROPERTY  
12 DISCLAIMER STATEMENT stating that the owner makes no  
13 representations as to the condition of the property, except as  
14 otherwise provided in the purchase contract, or (b) a RESIDENTIAL  
15 PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of  
16 the real property. Certain transfers of residential property are  
17 excluded from this requirement by G.S. 47E-1-2.

18  
19 NOTE TO OWNERS(S): Sign this statement only if you elect to sell  
20 the property and disclose items relative to the condition of the  
21 property; otherwise, complete and sign the RESIDENTIAL PROPERTY  
22 DISCLAIMER STATEMENT.

23  
24 Property Address/  
25 Legal Description:

26  
27 The undersigned owner(s) of the real property described above  
28 disclose the following present conditions of the real property of  
29 which the owner(s) has actual knowledge with regard to:

- 30 (1) Any abnormality or malfunctioning of the water  
31 supply or sanitary sewage disposal system:  
32 (2) Any damage to or abnormality of the roof, floors,  
33 foundation, basement, or load-bearing walls, or any  
34 leak in the roof or basement:  
35 (3) Any abnormality or malfunctioning of the plumbing,  
36 electrical, heating, or cooling systems:  
37 (4) Present infestation of wood-destroying insects or  
38 organisms, or past infestation the damage for which  
39 has not been repaired:  
40 (5) The real property's violation of zoning laws,  
41 restrictive covenants or building codes; any  
42 encroachment of the real property from or to  
43 adjacent real property; or notice from any  
44 governmental agency affecting this real property:

1           (6) Presence of lead-based paint, asbestos, radon gas,  
2           methane gas, underground storage tank, hazardous  
3           material or toxic material (whether buried or  
4           uncovered):

5 The purchaser and owner may wish to obtain professional advice  
6 about, or inspections of, the real property. The owner has a  
7 duty to disclose any material inaccuracy in this statement or any  
8 material change in the real property which is discovered between  
9 the date of this statement and the closing of the transaction.  
10 The owner(s) acknowledge having examined this statement before  
11 signing below:

12  
13  
14 Owner                      Date                      Owner                      Date  
15

16 The purchaser(s) acknowledge receipt of a copy of this disclosure  
17 statement and further acknowledge that they have examined it  
18 before signing below:

19  
20  
21 Purchaser                      Date                      Purchaser                      Date'

22 (d) A residential property disclosure statement must utilize  
23 the language and form set forth in paragraph (c) above, but also  
24 may include or have attached any other information or disclosure  
25 of the real property condition that the owner(s) desires.

26 "§ 47E-1-5. Time for disclosure; cancellation of contract.

27 (a) The owner of real property subject to this Chapter shall  
28 deliver to the purchaser the written disclosures or disclaimer  
29 required by this Chapter no later than the time such purchaser  
30 makes an offer to purchase, exchange, or option the property, or  
31 exercises the option to purchase the property pursuant to a lease  
32 with an option to purchase. The residential property disclaimer  
33 statement or residential property disclosure statement may be  
34 included in the real estate contract, in an addendum, or in a  
35 separate document.

36 (b) If the disclosure or disclaimer required by this Chapter  
37 is delivered to such purchaser after the purchaser makes an  
38 offer, the purchaser may terminate any resulting real estate  
39 contract or withdraw the offer no later than three days after the  
40 purchaser receives the disclosure or disclaimer form.

41 In order to terminate a real estate contract when permitted by  
42 this section, the purchaser shall, within the time required  
43 above, give written notice to the owner or the owner's agent  
44 either by hand delivery or by depositing into the United States

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1 mail, postage prepaid, and properly addressed to the owner or the  
2 owner's agent. If the purchaser terminates a real estate  
3 contract or withdraws an offer in compliance with this section,  
4 the termination or withdrawal of offer shall be without penalty  
5 to the purchaser, and any deposit shall be promptly returned to  
6 the purchaser. Any rights of the purchaser to terminate the  
7 contract provided by this section are waived conclusively if not  
8 exercised prior to the earlier of settlement or occupancy by the  
9 purchaser in the case of a sale or exchange, or prior to  
10 settlement in the case of a purchase pursuant to a lease with  
11 option to purchase.

12 "§ 47E-1-6. Owner liability for disclosure of information  
13 provided by others.

14 If the owner chooses to provide a disclosure of property  
15 condition pursuant to G.S. 47E-1-4(a)(2) above, the owner may  
16 discharge the duty to disclose by providing a written report  
17 attached to the residential property disclosure statement by a  
18 public agency or by an engineer, land surveyor, geologist, pest  
19 control operator, contractor, home inspector or other expert,  
20 dealing with matters within the scope of the public agency's  
21 functions or the expert's license or expertise. The owner shall  
22 not be liable for any error, inaccuracy, or omission of any  
23 information delivered pursuant to this subsection if the error,  
24 inaccuracy, or omission was made in reasonable reliance upon the  
25 information provided by the public agency or expert and the owner  
26 was not grossly negligent in obtaining the information or  
27 transmitting it.

28 "§ 47E-1-7. Change in circumstances.

29 If, subsequent to the owner's delivery of a disclosure  
30 statement to a purchaser, the owner discovers a material  
31 inaccuracy in the disclosure statement, or the disclosure  
32 statement is rendered inaccurate in a material way by the  
33 occurrence of some event or circumstance, the owner shall  
34 promptly correct the inaccuracy by delivering a corrected  
35 disclosure statement to the purchaser. Failure to deliver the  
36 corrected disclosure statement or to make the repairs made  
37 necessary by the event or circumstance shall result in such  
38 remedies for the buyer as are provided for by law in the event  
39 the sale agreement requires the property to be in substantially  
40 the same condition at closing as on the date of the offer to  
41 purchase, reasonable wear and tear excepted.

42 "§ 47E-1-8. Agent's duty.

43 A real estate broker or salesman acting as the agent of the  
44 owner of residential real property has the duty to inform the

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1 owner of the owner's rights and obligations under this Chapter.  
2 Provided the owner's real estate broker or salesman has performed  
3 this duty, the broker or salesman shall not be responsible for  
4 the owner's willful refusal to provide a prospective purchaser  
5 with a disclaimer or disclosure statement. Nothing in this  
6 Chapter shall be construed to conflict with, or alter, the broker  
7 or salesman's duties under Chapter 93A of the General Statutes.

8 "§ 47E-1-9. Rights and duties under Chapter 42, Landlord and  
9 Tenant, not affected during lease.

10 This Chapter shall not affect the landlord-tenant relationship  
11 between the parties to a lease with option to purchase contract  
12 during the term of the lease, and the rights and duties of  
13 landlords and tenants under Chapter 42 of the General Statutes  
14 shall remain in effect until transfer of ownership of the  
15 property to the purchaser.

16 "§ 47E-1-10. Authorization to prepare forms; fees.

17 The North Carolina Real Estate Commission may prepare, or cause  
18 to be prepared, forms for use pursuant to this Chapter and may  
19 charge a reasonable fee for the forms, not to exceed one dollar  
20 (\$1.00) per page and not to exceed three dollars (\$3.00) per form  
21 regardless of the number of pages per form."

22 Sec. 2. This act is effective upon ratification and  
23 applies to real estate contracts entered into on or after January  
24 1, 1996.

**SUMMARY  
RESIDENTIAL PROPERTY DISCLOSURE ACT**

This bill requires sellers of real property to disclose to prospective buyers conditions of the property of which the seller has actual knowledge, or, as an alternative to disclosure, to provide the buyer with a written disclaimer indicating the seller makes no representations about the condition of the property and that the property is being sold AS IS. Section 1 of the bill creates a new Chapter of the General Statutes.

<u>G.S. Section #</u>	<u>Description</u>
<u>47E-1-1</u>	Sets out the transfers of real property to which the Chapter applies (and thus, for which disclosure or disclaimer is required).
47E-1-2	Sets out those types of transfers of real property which are exempt from the Chapter. The exemptions pertain to transfers related or pursuant to: administration of estates, default on mortgage or foreclosure sales, transactions between or among co-owners of the property, tax indebtedness, first sale of newly constructed home never inhabited, and lease with option to buy where lessee occupies the property.
47E-1-3	Defines the following terms: 'Owner', 'Purchaser', 'Real estate contract', and 'Real property'.
47E-1-4(a)	If transfer is within scope of this act, then seller must either <ol style="list-style-type: none"><li>(1) Disclaim as to conditions, or</li><li>(2) Disclose with respect to conditions listed in subsection (c) of this section.</li></ol>
47E-1-4(b)	Sets out what must be included on a disclaimer statement.
47E-1-4(c)	Sets out what must be included on disclosure statement, including certain conditions of the property, such as water system, roof, plumbing, pest infestation, zoning law violations, lead-based paint.
47E-1-4(d)	Disclosure statement must conform to (c), but may include additional disclosures.
47E-1-5(a)	Provides that seller must make disclaimer or disclosure upon receipt of an offer or option to purchase; allows disclaimer or disclosure statement to be included in real estate contract.
47E-1-5(b)	If seller makes disclosure or disclaimer after offer or option to purchase, buyer may withdraw offer within 3 days of receipt of disclosure or disclaimer. If purchaser wishes to withdraw offer as permitted under this section,

purchaser must give notice of intent to withdraw and upon compliance may withdraw without penalty, including return of deposit. If purchaser fails to terminate by earlier of settlement or occupancy date, then purchaser conclusively waives right to terminate.

- 47E-1-6 Owner may meet disclosure requirement by providing a report on the condition written by a professional in his or her area of expertise. Owner not liable for errors in the report provided that owner reasonably relied on that information and was not negligent in obtaining or submitting it.
- 47E-1-7 If after disclosure is made an error is discovered or an event occurs rendering the disclosure materially inaccurate, then the owner must promptly deliver a corrected disclosure statement to the buyer. Failure to correct allows buyer all remedies available at law.
- 47E-1-8 Real estate agent or broker who is owner's agent must inform agent of his or her rights and obligations under this act. If the agent complies, then the agent is not responsible for owner's wilful refusal to disclaim or disclose.
- 47E-1-9 The act does not conflict with duties and responsibilities of agents and brokers under Chapter 93A.
- 47E-1-10 North Carolina Real Estate Commission authorized to prepare form and charge reasonable fees therefor not to exceed \$1.00/page or \$3.00/form.

Section 2 makes the act effective upon ratification and applicable to real estate contracts entered into on or after January 1, 1996.



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**FOR REVIEW ONLY**

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1 (c) Every operator shall provide tenants with a list of the  
2 park rules. These rules may be changed so long as tenants are  
3 given at least 60 days' notice of such changes, unless the rule  
4 changes are the result of changes in State or local law, in which  
5 case no such notice is required.

6 "§ 42A-2. Sales of manufactured homes.

7 (a) The owner of a manufactured home has the exclusive right  
8 to sell the home, and an operator may not receive any fee or  
9 commission on the sale of the home unless the owner otherwise  
10 agrees in writing.

11 (b) An operator may not place unreasonable or discriminatory  
12 restrictions on the placement of 'for sale' signs or upon access  
13 to the community by prospective purchasers or realtors, or  
14 otherwise interfere with the efforts of tenants to sell their  
15 manufactured homes.

16 "§ 42A-3. Grounds for eviction.

17 An operator may evict a tenant only pursuant Article 3 of  
18 Chapter 42 of the General Statutes.

19 "§ 42A-4. Change in use of land.

20 An operator may terminate a rental agreement in order to change  
21 the use of the community's land only by providing each tenant  
22 with written notice at least 30 days prior to such change in use.

23 "§ 42A-5. Retaliatory conduct.

24 Tenants in manufactured home communities may organize resident  
25 homeowners' associations without retaliatory action by the  
26 operator. The provisions of G.S. 42-37.1 provide tenants with  
27 the defense of retaliatory eviction with regard to the protected  
28 activities enumerated in that section."

29 Sec. 2. This act becomes effective January 1, 1996 and  
30 applies to all rental agreements entered into or renewed on or  
31 after that date.

32

**DRAFT**  
**SUMMARY FOR REVIEW ONLY**  
**MANUFACTURED HOMEOWNERS' BILL OF RIGHTS**

This bill provides that owners of manufactured homes are entitled to certain writings or practices from owners of mobile home communities from whom the homeowners rent a site for their home. The bill adds a new Chapter 42A to the General Statutes entitled "Manufactured Homeowners' Bill of Rights".

<u>G.S. Section #</u>	<u>Description</u>
42A-1(a)	Defines the terms 'manufactured home', 'operator', and 'tenant'.
42A-1(b)	Requires operators (of the mobile home park or community) to clearly define for tenants the services that are included in the fee for the home site.
42A-1(c)	Requires operators to provide tenants with a list of park rules, and allows for change in rules so long as tenants are given 60 days notice of the change. Notice not required if the change is pursuant to State or local law.
42A-2(a)	Homeowner has exclusive right to sell the home. Operator may not receive fee or commission on the sale of the home unless the homeowner agrees in writing.
42A-2(b)	Operator may not unreasonably restrict 'for sale' signs or access to the home by realtors or prospective buyers, nor otherwise unreasonably interfere with efforts to sell the home.
42A-3	Landlord-tenant law, Chapter 42, applies to tenants of mobile home communities; thus, evictions from these communities must comply with Chapter 42, and specifically with Article 3 of that Chapter, Summary Ejectment.
42A-4	Ok for operator to terminate a rental agreement based on change in the use of the land, however, operator must give tenant written notice of termination 30 days prior to change in use.
42A-5	Permits tenants to organize homeowner associations without retaliatory action by operator. Landlord-tenant law on retaliatory eviction applies.

Section 2 Act becomes effective January 1, 1996 and applies to rental agreements entered into or renewed on or after that date.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H/S

D

95-LNZ-013

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rental Car Ins./Priority Claims.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED  
 2 AN ACT TO ESTABLISH PRIORITY FOR PAYMENT OF LIABILITY CLAIMS FOR  
 3 RENTAL CARS UNDER CERTAIN CIRCUMSTANCES.  
 4 The General Assembly of North Carolina enacts:  
 5 Section 1. Chapter 20 of the General Statutes is amended  
 6 by adding the following new section to read:  
 7 "§ 20-279.21A. Priority for payment of liability claims involving  
 8 motor vehicles owned by rental car companys.  
 9 (a) As used in this section, unless the context clearly  
 10 requires otherwise, the term:  
 11 (1) 'Authorized operator' means the person or persons  
 12 authorized by the rental car company to operate the  
 13 vehicle under the terms of a rental contract.  
 14 (2) 'Rental car company' means an entity engaged  
 15 primarily in the business of renting vehicles in  
 16 this State to the general public for a period of  
 17 thirty days or less.  
 18 (3) 'Rental contract' means a written agreement, but  
 19 not a lease, under which one or more persons named  
 20 in the contract are authorized by the rental car  
 21 company to operate the vehicle under the terms of  
 22 the contract.  
 23 (4) 'Vehicle' means a motor vehicle of the private  
 24 passenger type including passenger vans and

~~FOR REVIEW ONLY~~

1 minivans that are primarily intended for transport  
2 of persons, and trucks used primarily for transport  
3 of cargo or persons.

4 (b) When a vehicle owned by a rental car company and subject to  
5 the provisions of this Article is rented to a person pursuant to  
6 a rental car contract and is operated by an individual not  
7 authorized under the contract to operate the vehicle, priority  
8 for payment of liability claims involving the vehicle shall be as  
9 follows:

10 (1) First, the motor vehicle liability policy or  
11 policies, if any, of the person operating the  
12 vehicle who is not an authorized operator of the  
13 vehicle under the rental car contract, regardless  
14 of whether the authorized operator of the vehicle  
15 under the rental car contract gave permission to  
16 the unauthorized person to operate the vehicle. If  
17 there is no motor vehicle liability policy covering  
18 the unauthorized operator under this subdivision,  
19 then,

20 (2) Second, the motor vehicle liability policy or  
21 policies, if any, of the authorized operator of the  
22 vehicle who permitted the person who was not an  
23 authorized operator under the rental car contract  
24 to operate the vehicle at the time of the incident  
25 giving rise to the liability claim. If both  
26 subdivisions (1) and (2) of this subsection are not  
27 applicable, then

28 (3) The motor vehicle liability policy or policies, if  
29 any, of the rental car company shall be liable for  
30 the claim.

31 If the limits of coverage payable under the policy or policies  
32 under subdivision (1) of this subsection are insufficient to  
33 fully cover the loss, the amount by which the loss exceeds those  
34 limits shall be covered by the policy or policies under  
35 subdivision (2) of this subsection. If subdivision (2) does not  
36 apply, or if the limits of coverage payable under the policy or  
37 policies under subdivision (2) are insufficient to fully cover  
38 the loss, the amount by which the loss exceeds those limits shall  
39 be covered by the policy or policies under subdivision (3) of  
40 this subsection.

41 As used in this subsection, the term 'motor vehicle policy or  
42 policies' means the same as defined in G.S. 279.21(a), and  
43 includes any other form of financial responsibility that meets  
44 the requirements of this Article."

~~FOR REVIEW ONLY~~

1           Sec. 2. This act becomes effective October 1, 1995 and  
2 applies to all policies written on or after that date.

3

4

**SUMMARY**  
**RENTAL CARS/LIABILITY CLAIMS PAYMENT PRIORITY**

This bill provides that under certain explicit circumstances, the priority for payment of liability claims pertaining to rental cars is reordered. Section 1 of the bill amends the Financial Responsibility Act, Article 9A of Chapter 20 of the General Statutes.

**G.S. Section #**  
**20-279.21A(a)**

**Description**

Defines terms used in the section. Section applies to rental car companies (but not companies in the business of leasing cars) and to the insurance coverage of persons operating the rental car, van, or truck.

**20-279.21A(b)**

Sets out the circumstances under which priority payment is reordered, and establishes the order of payment:

Must be a rental car company and rental car contract. If a person operates the rental car but is not the person named as operator on the rental car contract (herein 'unauthorized operator') and if that person is at fault in an accident involving the car, then:

- (1) if the unauthorized operator is covered under his or her own motor vehicle liability policy, that person's policy will be liable for payment of the claim. This is applicable even if the unauthorized operator car was given permission to operate it by the person named as operator in the rental car contract (herein 'authorized operator'). However, if the unauthorized operator does not have liability insurance, then
- (2) the motor vehicle liability policy of the authorized operator of the car must pay the claim, but, only if the authorized operator gave the unauthorized operator permission to drive the car; (so, if the rental car was stolen or otherwise obtained without the authorized operator's permission this section does not apply and you look to subdivision (3)); if subdivisions (1) and (2) are not applicable, then
- (3) The motor vehicle liability policy covering the rental car agency is liable for the claim.

If the unauthorized driver has a motor vehicle policy but the coverage under that policy is insufficient to fully cover the loss, then the balance of the loss will be assumed by the authorized driver's policy (assuming there is one and the authorized driver gave permission to the unauthorized driver); otherwise, the balance of the claim will be paid by the rental car agency's policy.

Motor vehicle policy is defined in the same Article as this section and includes lawful evidence of financial responsibility other than an insurance policy.

Section 2 of the bill makes it effective October 1, 1995 and applicable to policies written or renewed on or after that date.



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"Article 23.

"Consumer Protection Study Commission

"§ 120-205. Consumer Protection Study Commission established; purpose; duties.

(a) There is established the Consumer Protection Study Commission.

(b) The purpose of the Commission is to provide a forum for the general public, including consumers and the business community, and State officials to bring to the attention of the General Assembly problems and practices of a consumer or commercial nature that are or may be harmful to the economic well being of the State, or actions that may be necessary to enhance the State's economic and social well being.

(c) The Commission shall study matters brought before it by consumers, the business community, and State officials, as well as matters it may raise on its own initiative, and shall make the recommendations it deems necessary and appropriate for action by the General Assembly.

"§ 120-206. Commission membership, terms, vacancies.

(a) The Commission shall consist of 17 members. The Speaker of the House of Representatives shall appoint seven members, six of whom shall be persons who are members of the House of Representatives at the time of their appointment and one of whom shall be a public member. The President Pro Tempore of the Senate shall appoint seven members, six of whom shall be persons who are members of the Senate at the time of their appointment, and one of whom shall be a public member. The Governor shall appoint two public members, at least one of whom has experience representing the interests of consumers. The Lieutenant Governor shall appoint one public member. All initial appointments shall be made within one calendar month from the effective date of this Article.

(b) Vacancies shall be filled by the official who made the initial appointment using the same criteria as provided by this section.

(c) Legislative members appointed by the Speaker and the President Pro Tempore shall serve two-year terms. Public members initially appointed by the Speaker and the President Pro Tempore shall each serve a three-year term. The members initially appointed by the Governor and the Lieutenant Governor shall each serve a one-year term. Thereafter, the terms of all Commission members shall be for two years.

"§ 120-207. Commission meetings.

The Commission shall have its first meeting not later than 60 days after adjournment of the 1995 General Assembly at the call

**DRAFT**  
**FOR REVIEW ONLY**

1 of the President Pro Tempore of the Senate and the Speaker of the  
2 House of Representatives. The President Pro Tempore of the  
3 Senate and the Speaker of the House of Representatives shall each  
4 appoint one legislative member of the Commission to serve as  
5 cochair. The Commission shall meet upon the call of the cochairs.  
6 "§ 120-208. Commission reimbursement.

7 The Commission members shall receive no salary as a result of  
8 serving on the Commission but shall receive necessary subsistence  
9 and travel expenses in accordance with G.S. 120-3.1, 138-5, and  
10 138-6, as applicable.

11 "§ 120-209. Commission authority.

12 The Commission may obtain information and data from all State  
13 officers, agents, agencies, and departments, while in discharge  
14 of its duties, under G.S. 120-19, as if it were a committee of  
15 the General Assembly. The Commission also may call witnesses,  
16 compel testimony relevant to any matter properly before the  
17 Commission, and subpoena records and documents, provided that any  
18 patient record shall have patient identifying information  
19 removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4  
20 shall apply to the proceedings of the Commission as if it were a  
21 joint committee of the General Assembly. In addition to the  
22 other signatures required for the issuance of a subpoena under  
23 this section, the subpoena shall also be signed by the cochairs  
24 of the Commission. Any cost of providing information to the  
25 Commission not covered by G.S. 120-19.3 may be reimbursed by the  
26 Commission from funds appropriated to it for its continuing  
27 study.

28 "§ 120-210. Commission reports.

29 The Commission shall report to the General Assembly, the  
30 Governor, and the Lieutenant Governor the results of its study  
31 and recommendations. The Commission shall submit its written  
32 report not later than 30 days after the convening of each  
33 biennial session of the General Assembly.

34 "§ 120-211. Commission staff; meeting place.

35 The Commission may contract for clerical and professional staff  
36 or for any other services it may require in the course of its  
37 ongoing study.

38 The Commission may, with the approval of the Legislative  
39 Services Commission, meet in the State Legislative Building or  
40 the Legislative Office Building."

41 Sec. 2. There is appropriated from the General Fund to  
42 the General Assembly the sum of twenty-five thousand dollars  
43 (\$25,000) for the 1995-96 fiscal year and the sum of twenty-five

1 thousand dollars (\$25,000) for the 1996-97 fiscal year to  
2 implement this act.

3           Sec. 3. This act becomes effective July 1, 1995.

**SUMMARY  
CONSUMER PROTECTION STUDY COMMISSION**

This bill establishes a permanent legislative consumer protection study commission. The Whereas clauses set forth the reasons the commission is necessary. Section 1 of the bill amends Chapter 120 of the General Statutes to add a new Article establishing the Commission.

<u>G.S. Section #</u>	<u>Description</u>
120-205	This section establishes the Consumer Protection Study Commission (a), sets forth its purpose to provide a forum for hearing consumer related concerns (b), and requires the Commission to conduct studies and make recommendations to the General Assembly (c).
120-206	This section establishes membership (17) and appointment authority (Speaker, President Pro Tempore, Lt. Governor, and Governor) and indicates that 5 of the 17 members will be persons selected from the public at large. The section also provides for filling vacancies, and the length of membership terms (staggered - 2 year).
120-207	Requires Commission to meet not later than 60 days of adjournment of the 1995 long session, and authorizes Speaker and President Pro Tempore to appoint co-chairs.
120-208	Provides for reimbursement of expenses of legislative and public members in accordance with statutes.
120-209	Authorizes Commission to obtain information from other agencies of State government, and to subpoena witnesses and compel testimony, if necessary.
120-210	Requires Commission to report its findings and recommendations no later than 30 days after convening of each long session.
120-211	Allows Commission to contract for clerical and professional staff.
120-212	Authorizes Commission to meet in legislative meeting rooms.

Section 2 of the act appropriates \$25,000 in each fiscal year of the 1995 biennium for the Commission's activities.

Section 3 makes the act effective July 1, 1995.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE JOINT RESOLUTION 714

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Sponsors: Representative G. Thompson.

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Referred to: Rules, Calendar, and Operations of the House.

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April 1, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY ISSUES RELATING TO HEALTH AND FITNESS  
3 CLUBS.

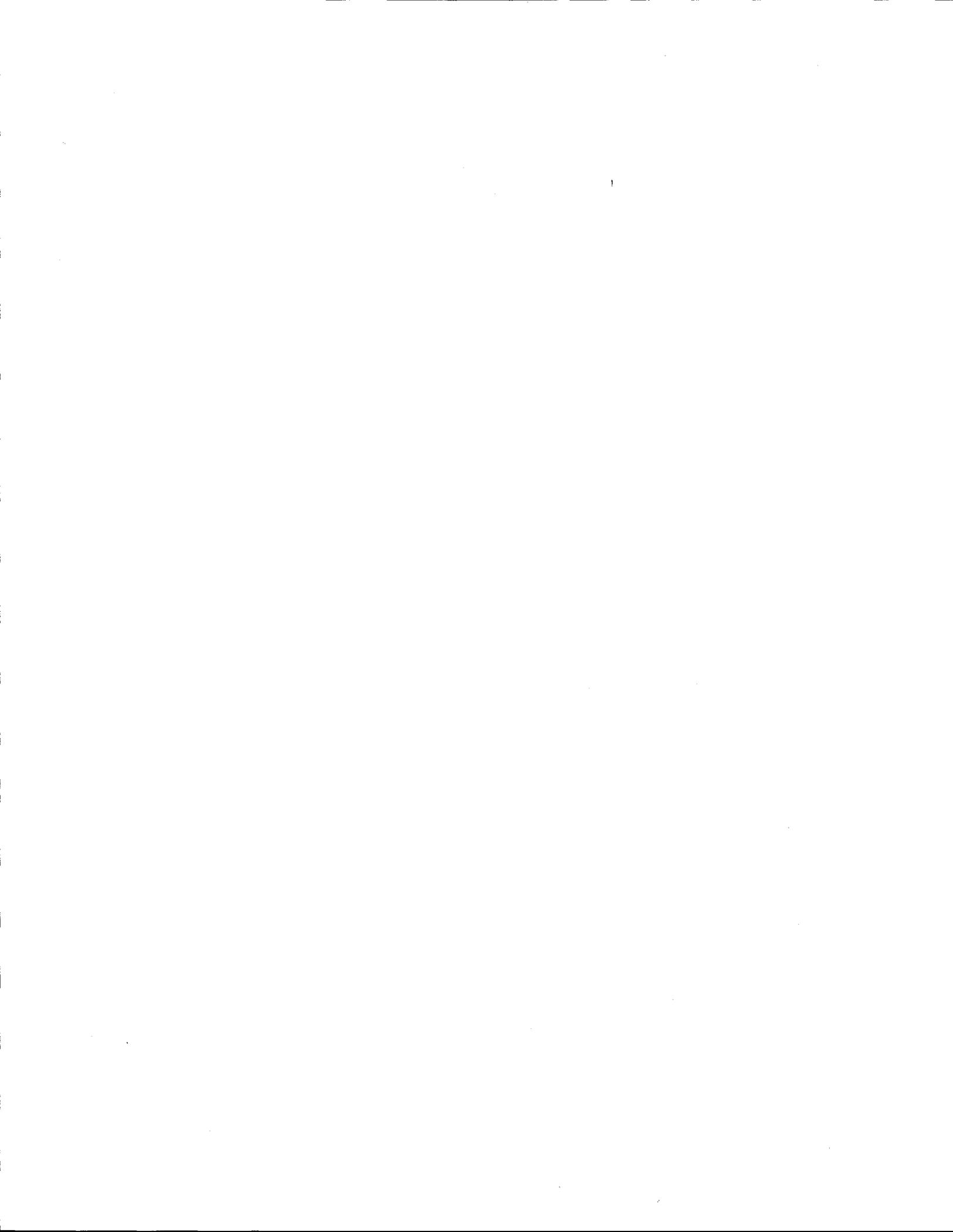
4 Be it resolved by the House of Representatives, the Senate concurring:

5 Section 1. The Legislative Research Commission may study issues  
6 relating to health and fitness clubs in North Carolina, including the following:

- 7 (1) The regulation of health and fitness clubs;  
8 (2) The sanitation of health and fitness clubs; and  
9 (3) The disclosure by health and fitness clubs of their financial  
10 position to members and prospective members.

11 Sec. 2. The Legislative Research Commission may make its  
12 recommendations and submit an interim report to the 1993 General Assembly,  
13 Regular Session 1994, and shall make a final report to the 1995 General Assembly.

14 Sec. 3. This resolution is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 798\*

Short Title: Priorities in Rental Car Ins.

(Public)

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Sponsors: Representatives Stamey; Black, Fitch, and Fussell.

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Referred to: Judiciary III.

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April 8, 1993

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE PRIORITIES FOR PAYMENT OF LIABILITY  
3 CLAIMS WHEN MORE THAN ONE INSURANCE POLICY COVERS A  
4 RENTED VEHICLE.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 20-279.21 is amended by adding a new subsection to  
7 read:  
8 "(c1) When a vehicle is rented and is covered by more than one liability  
9 insurance policy, the priority for payment of liability claims shall be:  
10 (1) The liability policy or policies, if any, of any unauthorized driver  
11 of the vehicle, who was driving the vehicle when the accident  
12 upon which the liability claim arose;  
13 (2) The liability policy or policies, if any, of any authorized driver of  
14 the vehicle, who was driving the vehicle when the accident upon  
15 which the liability claim arose;  
16 (3) The liability policy or policies, if any, of the rental company."  
17 Sec. 2. This act becomes effective October 1, 1993.







GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

2

HOUSE BILL 1032  
Committee Substitute Favorable 5/12/93

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors:

Referred to:

April 19, 1993

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE RESIDENTIAL PROPERTY DISCLOSURE ACT.  
3 The General Assembly of North Carolina enacts:  
4 Section 1. The General Statutes are amended by adding a new Chapter  
5 to read:  
6 "Chapter 47E.  
7 "Residential Property Disclosure Act.  
8 "§ 47E-1. Applicability.  
9 The provisions of this Chapter apply only to transfers by sale, exchange,  
10 installment land sales contract, option, or lease with option to purchase, of residential  
11 real property consisting of not less than one nor more than four dwelling units,  
12 whether or not the transaction is with the assistance of a licensed real estate broker or  
13 salesman.  
14 "§ 47E-2. Exemptions.  
15 The following transfers are specifically excluded from the provisions of this  
16 Chapter:  
17 (1) Transfers pursuant to court order, including transfers ordered by a  
18 court in administration of an estate, transfers pursuant to a writ of  
19 execution, transfers by foreclosure sale, transfers by a trustee in  
20 bankruptcy, transfers by eminent domain, and transfers resulting  
21 from a decree for specific performance.  
22 (2) Transfers to a beneficiary from the grantor or his successor in  
23 interest in a deed of trust, or to a mortgagee from the mortgagor or

1 his successor in interest in a mortgage, if the indebtedness is in  
2 default; transfers by a trustee under a deed of trust or a mortgagee  
3 under a mortgage pursuant to a foreclosure sale, or transfers by a  
4 beneficiary under a deed of trust who has acquired the real  
5 property at a sale conducted pursuant to a foreclosure sale under a  
6 deed of trust.

7 (3) Transfers by a fiduciary in the course of the administration of a  
8 decedent's estate, guardianship, conservatorship, or trust.

9 (4) Transfers from one or more co-owners solely to one or more other  
10 co-owners.

11 (5) Transfers made solely to a spouse or a person or persons in the  
12 lineal line of consanguinity of one or more transferors.

13 (6) Transfers between spouses resulting from a decree of divorce or a  
14 distribution pursuant to Chapter 50 of the General Statutes.

15 (7) Transfers made by virtue of the record owner's failure to pay any  
16 federal, state, or local taxes.

17 (8) Transfers to or from the State or any political subdivision of the  
18 State.

19 (9) Transfers involving the first sale of a dwelling never inhabited.

20 **§ 47E-3. Required disclosures.**

21 (a) With regard to transfers described in G.S. 47E-1, the owner of the residential  
22 real property shall furnish to a purchaser one of the following:

23 (1) A residential property disclaimer statement stating that the owner  
24 makes no representations as to the condition of the real property  
25 or any improvements to the real property, and that the purchaser  
26 will be receiving the real property 'as is', that is, with all defects  
27 which may exist, if any, except as otherwise provided in the real  
28 estate purchase contract; or

29 (2) A residential property disclosure statement disclosing those items  
30 which are required to be disclosed relative to the condition of the  
31 property. Such disclosure form shall include material defects  
32 regarding: (i) the water and sewer systems, including the source of  
33 household water, water treatment system, or sprinkler system; (ii)  
34 insulation; (iii) structural systems, including the roof, walls, floors,  
35 foundation, and any basement; (iv) plumbing, electrical, heating,  
36 and air conditioning systems; (v) wood-destroying insect  
37 infestation; (vi) land use matters; (vii) hazardous or regulated  
38 materials, including asbestos, lead-based paint, radon, and  
39 underground storage tanks; and (viii) other material defects known  
40 to the owner. The disclosure form shall contain a notice to the  
41 prospective purchasers and owners that they may wish to obtain  
42 professional advice about, or inspections of, the property. The  
43 owner shall not be required to procure any independent inspection

1 of the property in order to make the disclosures required by this  
2 Chapter.

3 (b) A residential property disclaimer statement shall read as follows:

4 'RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

5

6 Notice to Seller and Purchaser

7

8 The North Carolina Residential Property Disclosure Act requires the owner of  
9 residential real property consisting of 1-4 units, whenever the property is to be sold,  
10 exchanged, optioned or leased with an option to purchase, to furnish to the purchaser  
11 either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that  
12 the owner makes no representations as to the condition of the property, except as  
13 otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY  
14 DISCLOSURE STATEMENT disclosing defects in the condition of the property.  
15 Certain transfers of residential property are excluded from this requirement by G.S.  
16 47E-2.

17

18 NOTE TO OWNER(S): Sign this statement only if you elect to sell the property  
19 without representations as to its condition, except as otherwise provided in the  
20 purchase contract; otherwise, complete and sign the RESIDENTIAL PROPERTY  
21 DISCLOSURE STATEMENT.

22

23 Property Address/

24 Legal Description: \_\_\_\_\_

25

26 The undersigned owner(s) of the real property described above make no  
27 representations as to the condition of the real property or any improvements on the  
28 real property, and the purchaser will be receiving the real property 'as is', that is,  
29 with all defects which may exist, if any, except as otherwise provided in the real  
30 estate purchase contract.

31

32 The owner(s) acknowledge having carefully examined this statement before signing  
33 below:

34

35 \_\_\_\_\_  
36 Owner                      Date                      Owner                      Date

37

38 The purchaser(s) acknowledge receipt of a copy of this disclaimer statement and  
39 further acknowledge that they have carefully examined it before signing below:

40

41 \_\_\_\_\_  
42 Purchaser                      Date                      Purchaser                      Date

43

44 (c) A residential property disclosure statement shall read substantially as follows:

'RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Notice to Seller and Purchaser

The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or leased with an option to purchase, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects in the condition of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2.

NOTE TO OWNER(S): Sign this statement only if you elect to sell the property and disclose items relative to the condition of the property; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLAIMER STATEMENT.

Property Address/

Legal Description:

The undersigned owner(s) of the real property described above disclose the following defects with regard to:

- (1) The water and sewer systems, including the source of household water, water treatment system, sprinkler system:
- (2) Insulation:
- (3) Structural systems, including the roof, walls, floors, foundation, and any basement:
- (4) Plumbing, electrical, heating, and air conditioning systems:
- (5) Wood-destroying insect infestation:
- (6) Land-use matters:
- (7) Hazardous or regulated materials, including asbestos, lead-based paint, radon, and underground storage tanks:
- (8) Other material defects:

The prospective purchaser and owner may wish to obtain professional advice about, or inspections of, the property. The owner has a duty to disclose any material

1 inaccuracy in this statement or any material change in the property which is  
 2 discovered between the date of this statement and the closing of the transaction.  
 3 The owner(s) acknowledge having carefully examined this statement before signing  
 4 below:

5  
 6  
 7 Owner                      Date                      Owner                      Date

8  
 9 The purchaser(s) acknowledge receipt of a copy of this disclosure statement and  
 10 further acknowledge that they have carefully examined it before signing below:

11  
 12  
 13 Purchaser                      Date                      Purchaser                      Date

14 (d) A residential property disclosure statement may utilize any format, including  
 15 boxes for checking, that substantially discloses the information required by this  
 16 section or that the condition of any item listed is unknown.

17 **"§ 47E-4. Time for disclosure; cancellation of contract.**

18 (a) The owner of residential real property subject to this Chapter shall deliver to  
 19 the purchaser the written disclosures or disclaimer required by this Chapter no later  
 20 than the time the purchaser makes an offer to purchase, exchange, option, or lease  
 21 with option to purchase the property. The residential property disclaimer statement  
 22 or residential property disclosure statement may be included in the real estate  
 23 purchase contract, in an addendum, or in a separate document.

24 (b) If the disclosure or disclaimer required by this Chapter is delivered to the  
 25 purchaser after he makes an offer, the purchaser may terminate any resulting real  
 26 estate contract no later than three days after the purchaser receives the disclosure or  
 27 disclaimer form.

28 In order to terminate a real estate contract when permitted by this section, the  
 29 purchaser shall, within the time required above, give written notice to the owner or  
 30 the owner's agent either by hand delivery or by depositing into the United States  
 31 mail, postage prepaid, and properly addressed to the owner or the owner's agent. If  
 32 the purchaser terminates a real estate contract in compliance with this section, the  
 33 termination shall be without penalty to the purchaser, and any deposit shall be  
 34 promptly returned to the purchaser. Any rights of the purchaser to terminate the  
 35 contract provided by this section are waived conclusively if not exercised prior to  
 36 settlement or occupancy by the purchaser, in the case of a sale or exchange, or prior  
 37 to occupancy, in the case of a lease with option to purchase.

38 **"§ 47E-5. Owner liability for disclosure of information provided by others.**

39 If the owner chooses to provide a disclosure of property condition pursuant to G.S.  
 40 47E-3(a)(2) above, the owner may discharge his duty to disclose by providing a  
 41 written report by a public agency or by an engineer, land surveyor, geologist, pest  
 42 control operator, contractor, home inspector or other expert, dealing with matters  
 43 within the scope of the public agency's functions or the expert's license or expertise.  
 44 The owner shall not be liable for any error, inaccuracy, or omission of any

1 information delivered pursuant to this subsection if the error, inaccuracy, or omission  
2 was made in reasonable reliance upon the information provided by the public agency  
3 or expert and the owner was not grossly negligent in obtaining the information or  
4 transmitting it.

5 **"§ 47E-6. Change in circumstances.**

6 If, subsequent to the owner's delivery of a disclosure statement to a purchaser, the  
7 owner discovers a material inaccuracy in the disclosure statement, or the disclosure  
8 statement is rendered inaccurate in a material way by the occurrence of some event  
9 or circumstance, the owner shall promptly correct the inaccuracy by delivering a  
10 corrected disclosure statement to the purchaser.

11 **"§ 47E-7. Agent's duty.**

12 A real estate broker or salesman acting as the agent of the owner of residential real  
13 property has the duty to inform the owner of the owner's rights and obligations under  
14 this Chapter. Provided the owner's real estate broker or salesman has performed this  
15 duty, the broker or salesman shall not be responsible for the owner's willful refusal to  
16 provide a prospective purchaser with a disclaimer or disclosure statement. Nothing  
17 in this Chapter shall be construed to conflict with, or alter, the broker or salesman's  
18 duties under Chapter 93A of the General Statutes.

19 **"§ 47E-8. Effective date.**

20 An owner of real estate shall be required to make disclosures pursuant to this  
21 Chapter on and after January 1, 1994. Prior to January 1, 1994, the parties may, by  
22 written agreement in the real estate purchase contract, in an addendum to the real  
23 estate contract, or in a separate agreement, agree that the provisions of this Chapter  
24 shall apply, in which event the owner of residential real property shall provide a  
25 purchaser with a residential property disclaimer statement or a residential property  
26 disclosure statement.

27 **"§ 47E-9. Authorization to prepare forms; fees.**

28 The North Carolina Real Estate Commission is authorized to prepare, or cause to  
29 be prepared, forms for use pursuant to this Chapter and is authorized to charge a  
30 reasonable fee for the forms, not to exceed one dollar (\$1.00) per page and not to  
31 exceed three dollars (\$3.00) per form regardless of the number of pages per form."

32 Sec. 2. This act becomes effective January 1, 1994.





GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE JOINT RESOLUTION 1303

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Sponsors: Representatives Spears; Bowman, DeVane, Flaherty, Kinney,  
McAllister, Nye, Richardson, Stamey, and Warner.

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Referred to: Rules, Calendar, and Operations of the House.

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May 7, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY CONSUMER PROTECTION ISSUES IN NORTH  
3 CAROLINA.

4 Be it resolved by the House of Representatives, the Senate concurring:

5           Section 1. The Legislative Research Commission may study any  
6 consumer protection issues that the Commission determines should be addressed,  
7 giving consideration to the severity of harm to consumers, the large number of  
8 consumers harmed, or the vulnerability of a particular class of consumers harmed.

9           Sec. 2. The Commission shall report its findings and recommendations to  
10 the 1995 General Assembly and may make an interim report to the 1994 Regular  
11 Session of the 1993 General Assembly.

12           Sec. 3. This resolution is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE JOINT RESOLUTION 1324

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Sponsors: Representatives Beall; and Bowman.

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Referred to: Rules, Calendar, and Operations of the House.

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May 10, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH  
2 COMMISSION TO STUDY THE ADVISABILITY OF PROTECTING  
3 PURCHASERS OF USED MOTOR VEHICLES AND OF EXTENDING  
4 WARRANTIES TO THE SALE OR LEASE OF USED MOTOR VEHICLES.

5 Be it resolved by the House of Representatives, the Senate concurring:

6 Section 1. The Legislative Research Commission may study the  
7 advisability of protecting purchasers of used motor vehicles and the advisability of the  
8 General Assembly enacting legislation to provide for limited warranties extending to  
9 the sale or lease of used motor vehicles. The Commission shall consider the  
10 applicable laws of other states, specifically New York's statute that provides  
11 warranties for the sale or lease of used motor vehicles.

12 Sec. 2. The Commission shall report its findings and recommendations to  
13 the 1995 General Assembly and may make an interim report to the 1994 Session of  
14 the 1993 General Assembly.

15 Sec. 3. This resolution is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 1453

Short Title: Consumer Protection Study Comm.

(Public)

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Sponsors: Representatives Easterling; and Luebke.

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Referred to: Rules, Calendar, and Operations of the House.

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May 17, 1993

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH AN ONGOING CONSUMER PROTECTION STUDY  
3 COMMISSION.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 120 of the General Statutes is amended by adding a  
6 new Article to read:  
7 "ARTICLE 12I.  
8 "Consumer Protection Study Commission.  
9 **"§ 120-70.85. Consumer Protection Study Commission created; membership.**  
10 The Consumer Protection Study Commission is created. The Commission shall  
11 consist of 14 members as follows:  
12 (1) Seven members appointed by the President Pro Tempore of the  
13 Senate, at least five of whom shall be members of the Senate; and  
14 (2) Seven members appointed by the Speaker of the House of  
15 Representatives, at least five of whom shall be members of the  
16 House of Representatives.  
17 Terms on the Commission shall be for two years and begin on the convening of  
18 the General Assembly in each odd-numbered year, except the terms of the initial  
19 members, which shall begin on appointment and end on the day of the convening of  
20 the 1995 General Assembly. Members may complete a term of service on the  
21 Commission even if they do not seek reelection or are not reelected to the General  
22 Assembly, but resignation or removal from service in the General Assembly  
23 constitutes resignation or removal from service on the Commission.

1 A member continues to serve until the successor is appointed. A vacancy shall be  
2 filled within 30 days by the officer who made the original appointment.

3 **"§ 120-70.86. Purpose and powers of Commission.**

4 (a) The Consumer Protection Study Commission shall examine, on a continuing  
5 basis, consumer protection issues in North Carolina, in order to make ongoing  
6 recommendations to the General Assembly on ways to improve the protection of  
7 consumers and the consumer protection laws of this State. The Commission may  
8 consider the consumer protection laws of other states.

9 (b) The Commission may make interim reports to the General Assembly on  
10 matters for which it may report to a regular session of the General Assembly. A  
11 report to the General Assembly may contain any legislation needed to implement a  
12 recommendation of the Commission.

13 **"§ 120-70.87. Organization of Commission.**

14 (a) The President Pro Tempore of the Senate and the Speaker of the House of  
15 Representatives shall each designate a cochair of the Consumer Protection Study  
16 Commission. The Commission shall meet at least once a quarter and may meet at  
17 other times upon the joint call of the cochairs.

18 (b) A quorum of the Commission is eight members. No action may be taken  
19 except by a majority vote at a meeting at which a quorum is present. While in the  
20 discharge of its official duties, the Commission has the powers provided under G.S.  
21 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

22 (c) Members of the Commission shall receive subsistence and travel expenses as  
23 provided in G.S. 120-3.1. The Commission may contract for consultants or hire  
24 employees in accordance with G.S. 120-32.02. The Legislative Services Commission,  
25 through the Legislative Administrative Services Commission, through the Legislative  
26 Administrative Officer, shall assign professional staff to assist the Commission in its  
27 work. Upon the direction of the Legislative Services Commission, the Supervisors of  
28 Clerks of the Senate and of the House of Representatives shall assign clerical staff to  
29 the Commission. The expenses for clerical employees shall be borne by the  
30 Commission."

31 Sec. 2. There is appropriated from the General Fund to the General  
32 Assembly the sum of thirty thousand dollars (\$30,000) for the 1993-94 fiscal year and  
33 the sum of twenty thousand dollars (\$20,000) for the 1994-95 fiscal year for the  
34 expenses of the Commission.

35 Sec. 3. This act becomes effective July 1, 1993.

